OUTLINES OF POLITICAL SCIENCE

PART I

POLITICAL THEORY

CONTENTS

Chapter I

THE SCOPE AND METHODS OF POLITICAL SCIENCE

THE STUDY of Political Science must necessarily begin with an inquiry into its scope and subject matter. The student must have a clear idea as to what it includes and what it does not, the aspects of human knowledge it refers to, its relations with other allied sciences, and the methods of study it follows. That is essential for the study of any branch of human learning. It is particularly so in respect of Political Science, because, in our common talk we often confuse Political Science with Politics, and use the two terms as if they had the same meaning. Politics includes a lot of things which Political Science has to eschew. It is a science with well defined scope and methods of study. As a science it bears close affinities with certain other sciences such as History, Economics, Jurisprudence, and Sociology, and these have to be clearly distinguished. It is only after we have understood what exactly is the subject matter of Political Science, and how it differs from that of other Sciences with which it has close affinities, that our study of Political Science can properly begin.

POLITICAL SCIENCE AND POLITICS. Political Science is the science of the state. It is that branch of human learning which is concerned with the state. It seeks, in other words, to study the state in its various aspects. Government is the organization of the state, and therefore, it studies Government. Making of laws, and providing for justice are the functions of Government, and therefore, it studies the Laws and the system of justice. Methods of control that Government adopts, and the liberty that it guarantees to the citizen

also fall within the purview of this study. In short, Political Science takes account of the manifold aspects of the state, and seeks to study its origin and development, its forms and functions, its aims and methods. Politics, however, as we understand it, pertains to "the burning topics of the day", the contemporary events and policies of Government that influence the political life of a community at a particular time. It also refers to the struggle for power, and the activities pertaining to the actual administration of public affairs. Thus Political Science is the scientific study of the fundamentals of the state, its form and functions, its aims and objectives, whereas Politics refers to the current affairs and administration, and the changing moods of a political community at a particular time. As Bluntschli in his *Theory of the State* has pointed out, "Politics is more of an Art than Science and has to do with the practical conduct or guidance of the State, whereas Political Science is concerned with the foundations of the State, its essential nature, its forms or manifestations, and its development".

POLITICAL SCIENCE AND HISTORY. Political Science, as it has been indicated above, has close affinities with certain other sciences. Its subject matter makes its relations with History intimate and abiding. Rise and fall of kingdoms and empires, the destinies of their peoples, the governments they had, the laws they followed, the authority they exercised and such other things form the subject matter of History. It is from History that Political Science derives most of its material. The student of Political Science has to look to History for the facts regarding the origin and development of the state, its structure and functions, its aims and objectives. That is why Sir John Seeley so aptly said that Political Science without History has no root, and History without Political Science has no fruit. But Political Science has nothing to do with the narrative of wars and revolutions, rise and fall of dynasties, art and literature, and such other facts of history. It is mainly concerned with political history, and that part of History which deals with political institutions. The study

of the political institutions can be best understood in their historical setting. Political Science, therefore, has no interest in the mere mass of historical facts and recorded events, except when it uses them to discover general laws and principles of political life. Similarly, History has no concern with the laws and principles of political life. Besids, Political Science studies the state not merely as it has been and as it is, but also as it ought to be. History only gives an account of the state as it has been in the past.

POLITICAL SCIENCE AND ECONOMICS. Its relations with Economics are brought out by the fact that Economics studies human activities in the pursuit of wealth, and these activities are carried on within the framework of the state, and under the protection of the state. Taxation which is an important branch of Economics, forms one of the basic functions of Government. The economic activities of a community very much depend upon its state policy, and political institutions are often affected by the economic standards of the people. Besides, the modern state seeks to be a welfare state by means of planned economy. In fact very often Economics is called Political Economy, and that brings out the relationship between Economics and Political Science.

POLITICAL SCIENCE AND JURISPRUDENCE. Jurisprudence is the Science of Laws. It studies the underlying principles and the process of development of laws. It examines legal concepts, their origin and development, and their implications to human society. Laws form the basis of Government. Government runs according to the laws; personal security and liberty are maintained by means of laws. Thus any study of the state cannot be complete without a reference to the basic principles of laws, and therefore, Political Science is intimately connected with Jurisprudence.

POLITICAL SCIENCE AND ETHICS. Ethics is another branch of human learning which has deep affinities with Political Science. Ethics deals with the moral concepts of man.

with his conduct in so far as it is considered right or wrong in society. Human institutions arise and function in the atmosphere created by ethical concepts and ideals. No institution would dare propagate immoral ideas or lend countenance to immoral acts. Similarly the aims and objects of the state, as also its activities, can never run counter to the ethical ideas and standards of the political community. As it has been rightly pointed out "the origin of moral ideas is closely connected with the origin of the State. Both arose in that early group life based on kinship and religion when custom was law and when moral and political ideas were not differentiated."[1] Thus in studying the state, the student has to understand the role of ethical concepts in its origin and development. Thus the Science of State comes into close relationship with Ethics.

POLITICAL SCIENCE AND SOCIOLOGY. Sociology has also close affinities with Political Science. Sociology is the general science of social relations. It is, in a way, a very comprehensive science, because it includes in its scope the study of the fundamental facts of social life—the facts and laws of human association. Other sciences take up only some special aspects of social life, e.g. Economics the economic aspect, and Ethics the moral aspect. Similarly Political Science takes up the political aspect of social life. Sociology studies social relationships, social institutions, religious concepts, customs, usage etc. Since social institutions, like marriage and religion deeply influence our political life and the functions of Government, the student of Political Science cannot do without a reference to Sociology. In fact Sociology like the other sciences already discussed, and Political Science fall within the same broad category of social sciences.

DEFINITION OF POLITICAL SCIENCE. Political Science, with its affinities thus spread over a number of other social sciences, has been defined by Paul Janet as "that part of social science which treats of the foundations of the State

[1] Garner, *Political Science and Government*, p. 6.

and of the principles of Government". Sir John Seeley referred to its scientific character when he said that "Political Science investigates the phenomena of Government as political economy deals with wealth, biology with life, algebra with numbers, and geometry with space and magnitude". J. K. Bluntschli emphasized the dynamic character of the study involved when he defined Political Science as "the Science which is concerned with the State, which endeavours to understand and comprehend the State in its conditions, in its essential nature, its various forms and manifestations, its development". In studying the state we have to think of it, as a human institution, which has arisen due to certain conditions of life, changed its forms to suit the changing environment, and has functioned to fulfil certain ends of man in society. We must not lose sight of the fact that the state has a social background and a reference to the times and environment. It is a product of evolution in human society. We can trace its beginnings far back into the past of which even history has no record. It starts with the relationship of obedience and control as embodied in the primeval family organization of mankind. It is in a nebulous and undifferentiated form at that stage. Gradually as man's life and activities in society become more and more organized, the relationship of obedience and control assumes the form of Government. Government in course of time becomes a highly complicated organization. The community amidst which the government functions becomes also highly compact, and the state in its present form comes into existence. Political Science has to study the state as a social phenomenon which is evolutionary in character, and of which the fundamental fact is the human relationship based on obedience and control.

CAN THERE BE A SCIENCE OF THE STATE? We may next discuss the question whether the study of the state, which is the subject-matter of Political Science follows the methods that are scientific, and whether Political Science can be regarded as a science. There is no doubt that political phenomena are highly uncertain, variable and complex in

character. It is difficult to catch and confine into a prepared groove and crucible the human mind and human behaviour. The reactions of the human mind as a result of its impact with ideas, material facts and situations are very often unpredictable and impossible to control. Therefore it has been pointed out that strictly scientific methods of investigation cannot be applied to the study of political phenomena. In other words the methods of investigation, followed for example in the study of Physics and Chemistry, Botany and Zoology comprising experimentation under controlled conditions, observation, classification of data, and deduction of general principles and laws cannot be adopted in the study of Political Science. But that need not rule out the claim of Political Science to be treated as a science. For, scientific method does not consist in mere experimentation under controlled conditions as in a scientific laboratory, and deduction of laws from it. It also consists in the observation of certain natural phenomena over which man cannot have any control, classification of the facts observed and the deduction of general principles. That is how the meteorologists study atmospheric conditions, and arrive at certain conclusions, and discover certain laws of nature. Therefore Meteorology is a science in the strict sense of the word. In the same way political phenomena can be studied, and in the same sense there can be a science of the state.

Again, it is incorrect to think that the scientific method of examining facts is peculiar to one class of phenomena or to one class of inquirers. It can be applied to social as well as physical phenomena. That is not to say that Political Science can be regarded as an exact science in the sense that Physics, Chemistry and Mathematics are. Its laws and conclusions lack the precision and definiteness characteristic of the laws and conclusions of physical sciences. Nevertheless, there is a fair degree of constancy in human nature. The human mind everywhere works in a fairly rational way. Its reactions to the same sets of conditions or material facts are similar everywhere and can be predictable with a fair degree of certainty. Political phenomena therefore can be studied in an inductive manner. One cannot try experiments in the same way as the

physicist or chemist does. But the formulation of state policies and making of new constitutions, planning of economic development, and such other measures adopted by a state furnish instances of political experiments. Their results noted from time to time add to our comprehension of the factors that govern human society. We can, therefore, treat Political Science as a science though it has not attained that degree of perfection which physical sciences have.

THE METHODS OF POLITICAL SCIENCE. This naturally leads to an inquiry into the methods that Political Science adopts for investigation and study. It was in the nineteenth century that political phenomena came to be regarded as a proper subject for study and scientific investigation. Since then a number of thinkers and writers have contributed to the methodology of Political Science. Auguste Comte suggested three methods for the scientific study of social phenomena, viz. the methods of observation, experiment, and comparison. John Stuart Mill thought, there can be four methods, viz. the chemical or experimental, the geometrical or abstract, the physical or concrete deductive, and the historical method. According to him the first two were the true methods. Bluntschli considered the philosophical and the historical methods as the only correct methods of political investigation.

THE EXPERIMENTAL METHOD. Of these the experimental method seems to be common to all. But the nature of human society and grouping is such that it cannot be made an object of artificial experimentation. We cannot do in politics what the experimentor does in chemistry. If the chemist wishes to try the effect of temperature on a certain substance he can do so by creating artificial conditions. We cannot take a portion of the community, place it in isolation, and try measures on it, and note the results. If we wish to experiment on democracy for example, we cannot select a state at will, wipe out its preferences and prejudices, introduce democracy and wait for the results. That will be an irrational adventure for the simple reason that human communities

cannot be treated in isolation. They are constantly exposed to extraneous influences like wars, famines, revolutions and economic crises. Further the tendencies and tempers, sentiments and susceptibilities of men cannot be measured in the same way that we can measure the reactions of elements. We can measure for instance the temperature, humidity, and the force of wind. We cannot measure the intensity of human passions in a political controversy, or determine the explosive force of a revolutionary situation.

Nevertheless, we know it for a fact that political experimentation is constantly going on consciously or unconsciously in all organized communities. A new law made, a new policy initiated, a new constitution promulgated, or a new system of taxation and land holding introduced is an experiment in Political Science. By observing how a new law operates, a new policy succeeds or a new constitution works, certain conclusions are drawn and accordingly the provisions of the law, the policy or the constitution are modified to suit the needs and desires of the community. This method is scientific in character no doubt, but by itself it does not help the discovery of any new truth or laws in human affairs. This has therefore to be supplemented by other methods.

THE COMPARATIVE METHOD. In order to discover certain truths or laws in human affairs, the political movements, institutions, and policies of a community have to be compared with those of other communities. But while making comparisons it must not be forgotten that political movements, institutions and policies do not arise and work in a vacuum. They are closely related to the life of the community. They arise in the midst of certain conditions, and create new conditions. What, for example, were the conditions that gave rise to the Glorious Revolution in England and the establishment of the supremacy of British Parliament, may be compared with the conditions which gave rise to the French Revolution and the establishment of the republican government in France. By such comparison some useful data may be obtained, and from these, after careful analysis, classification and comparison,

certain conclusions may be drawn. These may be regarded as general principles or laws influencing the life of political communities. But in adopting this method there is also a danger. In the effort to discover general principles certain important factors like the differences in the temperament and genius of the communities compared, their peculiar social and economic background, their political training and experience in the past may be lost sight of, and that will vitiate the nature of the principles or laws deduced.

THE HISTORICAL METHOD. It is here that one has to turn to history, and adopt what is known as the historical method. Comparisons are misleading unless they are set in their proper perspective. Political phenomena are not transient bubbles on a running stream nor are they evanescent colours of a rainbow. They are deeply rooted in the life of the people. They have intimate affinities with the temperament and genius, the social and economic background, the moral and legal standards of the people. They are, above all, a product of the past, and can be fully comprehended only through a knowledge of their past. That is why a historical study is essential for the scientific investigation of political institutions. The historical method according to Sir Frederick Pollock "seeks an explanation of what institutions are and tending to be, more in the knowledge of what they have been and how they came to be what they are, than in the analysis of them as they stand". It postulates, in other words, that all human institutions are results of the process of evolution. It takes note of all the forces that operate in human society, all the factors that influence life, and in the light of these, offers an explanation of the development of social institutions, political ideas and moral concepts. That is how it seeks to give an integrated picture of human endeavours. Therefore, in a comparative study of political institutions of different communities it will be dangerous to lose sight of the historical factors which determine their evolution. Thus the historical method which emphasizes the evolutionary character of all institutions and brings out their relations to the times and

environments, supplies the deficiency of the comparative method.

THE METHOD OF OBSERVATION. But even in pursuing the historical method we have to guard against certain pitfalls. Very often a comparison of historical events is misleading, when their resemblance is not correctly assessed. For example, it is misleading to compare the French Revolution of 1789 with the Russian Revolution of 1917, or the Tribal Republics of Ancient India with the City States of Greece. Further the interpretation of historical events is often vitiated by the personal motives and sentiments of the interpreter, the historian. There is no such danger for the chemist. He has no love or hate for the substance on which he works, and the substances are absolutely the same everywhere whether in Russia, France, India or Greece, and at all times whether in 17th century A.D. or before the birth of Christ. To avoid these dangers Lord Bryce suggested the method of observation, that is, the study of governments and political institutions by observing at close quarters their actual working. The investigation can be pursued, if possible, by personal contacts with the public men, legislators and administrators, as also by personal observation of what the governments were actually doing and how they were doing it. The investigator must be sure of his facts, critical of his sources of information, and objective in the appraisal of his facts. Then alone the method of observation will yield the best results.

THE JUDICIAL METHOD. Besides these, the German political thinkers advocate what can be called the juridical method. It starts with the point of view that the state primarily is a corporation or juridical person, whose function is to make and enforce law. It denies that the state has any other ends than the maintenance of a juridical regime, a system of public law, rights, and obligations. But the state is certainly more than a corporation and has ends which cannot be attained merely by making and enforcing laws. Similarly the state with its institutions, and as a product of the play and

interplay of social and political factors cannot be understood merely by a reference to its system of laws, rights and obligations. Obviously the view is one-sided, and the method, as adopted for the study of the state, is inadequate.

SOCIOLOGICAL AND BIOLOGICAL METHODS. The methods known as sociological and biological are not methods at all, and much less two distinct methods. They are closely akin to each other and follow the same approach. The so-called sociological method considers the state primarily as a social organism, whereas the biological method regards the state as possessing the qualities of a living organism. The former views the individuals as component parts of the state, whose attributes are derived from the qualities of the individuals comprising it. The latter describes the component parts of the state and their respective functions in terms of human anatomy, as if they belonged to a living body. Both the methods apply the theory of biological evolution to the form and functions of the state. Herbert Spencer and Auguste Comte were notable exponents of this method. But to regard the state as a social organism or as an institution that partakes of the character of a living organism is to offer a point of view, rather than a method for the study of the state or political phenomena. It is more an analogy than a method of investigation.

THE PHILOSOPHICAL METHOD. The philosophical method suggests an *a priori* approach to the study of the state. Rousseau, Mill and Sidgwick are exponents of this method. It is essentially a deductive method. It starts with certain assumptions about the fundamentals of human nature, and from these assumptions draws conclusions as to the nature of the state, its ends and functions. It then seeks to assess the form and functions, the aims and objectives of the social and political institutions actually existing in the light of conclusions or theories. That is a defective approach to the study of social and political phenomena, and puts the cart before the horse. It ignores human experiences and historical facts and builds

very often upon pure idealism and imagination. Plato in his *Republic* and Rousseau in his *Social Contract* proceeded in this way. One has to be very careful about pure generalizations and philosophical speculations in the study of political phenomena. They must be based on correct historical data and the facts of life. Otherwise the study ceases to be realistic and inductive, and degenerates into what Bluntschli calls, purely ideological.

These are the methods of Political Science. They must not be confused with mere points of view. The true methods are those which take up the study of political phenomena in a scientific way. The difficulties in pursuing these methods arise from the innumerable facts of human life and intangible elements of human nature, that influence social and political institutions. That is peculiar to all social sciences including Political Science. Political Science cannot be an exact science like Physics or Chemistry, but none the less its methods and its approach to the study of political life is essentially scientific.

Chapter II

THE NATURE OF THE STATE

MEANINGS OF THE WORD STATE. It has been pointed out that Political Science is the science of the state. The state is its central subject of study. But the word state is often used in a variety of senses. When we speak of "the Church and the State" we are actually thinking of two different kinds of organizations in contrast to each other, one being ecclesiastical or religious, and the other a political or secular organization. The real meaning of the state is not brought out. We also speak, for example, of "state management of railways", or "state control of education". Here the "state management" or "state control" actually means management or control by the government, and instead of the word "state", "government" would be more appropriate. Similarly when we speak of the State of Uttar Pradesh or Rajasthan in the Indian Republic, or the State of Illinois in the United States of America, or the State of Victoria in the Australian Commonwealth, we are not using the word state in its scientific sense. The States of Uttar Pradesh, Illinois and Victoria are not States at all. They are component parts respectively of the State of the Indian Republic, the United States of America and the Australian Commonwealth. It will be more appropriate to call them provinces. Again we use the word state in contrast to the individual. Herbert Spencer wrote a remarkable book and called it *The Man versus the State*. Here we are using the word state to mean the collective and organized aspect of the community so that it may be distinguished from the individual citizen or the distributive aspect of the community. These are the meanings generally attached to the word "State" in our daily use. We do not discriminate between its scientific and popular meanings. But the student

of Political Science must distinguish them, and keep clear of the confusion.

We have already noted that Political Science is one of the social sciences, and studies one aspect of the society. Man's activities in society are manifold, and of these political activities form only one category. There are others like religious and economic activities. The state stands for and embodies the political life of man in society. But what the state stands for can be best understood by a reference to its constituent elements.

CONSTITUENT ELEMENTS OF THE STATE: (A) POPULATION. The state is composed of four elements, viz. population, territory, government and sovereignty. It goes without saying that there cannot be a state without some kind of population, since the state is a human organization. There can be no state in an uninhabited land. At the same time there can be no state if the population is not sufficiently numerous. A single family or just a few families cannot form a state. In ancient times there used to be small states, like the city states in Greece or the tribal republics in India. Their populations numbered just a few thousand. They were of the size of some of our municipalities today. But in modern times the states like India, Russia and the United States of America have populations of hundreds of millions.

Writers such as Aristotle and Rousseau were in favour of small populations. Aristotle thought that neither ten nor a hundred thousand was the proper size of the population for a state, and Rousseau that ten thousand was ideal for a state. Their chief criticism was that good government would not be possible if the population was large and unwieldy. Under modern conditions, however, that is not a problem. Big states with vast populations have come into being as a result of new factors in political grouping. These are the principles of federalism, nationality and imperialism. Further, the needs of good government are easily satisfied by modern means of communication. India with more than three hundred million, and the U.S.A. with more than a hundred and fifty million

can therefore have a unified and orderly government. In fact there can be no limits to population under modern conditions. Small states such as Monaco and Luxembourg, and big states like the U.S.A., and India exist, and have good governments as well. Nevertheless, small populations are rather a handicap than an advantage in the modern days. For purposes of defence in times of war, and industrial and commercial enterprizes in times of peace their capacities are found to be limited.

(In the nineteenth century it was thought that the population of a state must be homogeneous in character. They must belong to the same racial stock and possesses the same culture. They must even have the same language. But today these considerations have hardly any weight.) Peoples of different racial stocks, languages and cultures combine as in the U.S.S.R. to form a single state. The ideals of nationality and federalism have set aside the barriers of race, culture and language.

(B) TERRITORY. The people must have a territory of its own, in order to form a state. The Jews, for example, did not have their own territory for centuries, and though they were a talented people, progressive and rich, they could not form a state. They were spread over the world and remained citizens of different states of the world. It is only when they settled down in Palestine that they could have a state of their own.) Nomadic tribes who wander from one country to another, and do not settle down anywhere have failed to form a state. (There is no doubt that a territory is essential for a state, but at the same time no definite limits can be laid down as to the extent of the territory, needed for the formation of a state. There are states which have just a few square miles of territory like Monaco with eight square miles, and states which have millions of square miles, like the U.S.S.R. with eight million and the U.S.A. with three million square miles. (With modern means of communication the vastness or enormous size of a state does not present any difficulty today in the way of good government) Indeed, in a way, it makes for strength and prosperity. Small states cannot have the

vast material resources that large states possess. Naturally in military strength and economic prosperity the small states suffer in comparison with big states. But mere vastness of territory does not make for the greatness of a state. There are other factors connected with territory, for example, climate, geographical situation and natural resources, that determine the growth and greatness of a state.

Climate has a very great effect on the physical growth and the mental make-up of the people. It thereby influences their social and political conditions and development. People living in the regions of extreme cold find their struggle for existence extremely hard, so much so that they have little opportunity left for social and political development. Their entire life is one endless struggle against nature. Similarly people living in the regions of extreme heat become so enervated, weak and listless that they have hardly any enthusiasm to live a vigorous social and political life. They tend to develop a fatalistic outlook, which kills individual initiative and enterprize. The most vigorous political life has therefore been developed by peoples living in temperate climates. But that is not to suggest that others living in the regions of climatic extremes are incapable of political life. With the growth of science and man's control over nature adverse climatic conditions have become less forbidding than before. Today people living in these regions can develop political life as surely, though not as rapidly, as the people in the more favoured regions.

Geographical situation is an important factor in determining the area and development of a state. Very often wars have been fought to secure natural or geographical frontiers for the state. The best way of fixing frontiers is to have natural barriers like rivers, seas and mountain ranges. They clearly mark out the territory of a state, help in its defence, and make for the unity of the people. One of the chief reasons of the unity of India is that geographically it is self-contained and well marked. The seas and the great mountain ranges have provided it with the finest natural defences. Behind these defences the people have, for long, been free from foreign

invasions, and have developed a great civilization and material prosperity. They have been able to build up the political unity of a vast population. Compared to this, the peoples of Western Europe, living in small, ill-defined territories like France, Italy, Austria, Germany, Holland and Belgium, altogether covering an area smaller than India, have always remained separate, hostile to one another, and politically divided. Some of them like France and Germany have fought for centuries to secure natural frontiers.

Geographical situation also helps in the development and greatness of a state. The island situation of Great Britain has been responsible for its development into a great naval power. Germany, on the other hand, had powerful states on three sides with no natural defences, and fighting them constantly, developed into a strong military state. Geography also helps to determine the activities of a people. The British people, for example, became the carriers of sea-borne trade and commerce, owing to the situation of their island home. The progress of Japan in maritime activities is also due to her geographical position. In ancient times India could develop a vast maritime trade, and establish colonies in South-east Asia and in the islands of Java, Bali, Sumatra etc. because she has an extensive sea-board and the people there naturally take to maritime activities. Thus for purposes of defence, political growth and greatness geographical situation is of great significance for a state.

Lastly, the natural resources play an important part in determining the size, prosperity and greatness of a state. A state should be rich in mineral wealth, and produce of the land such as food grains, cotton etc. These make for economic development and national prosperity. In the modern world national strength depends upon national wealth. If a country has vast deposits of iron, coal, patroleum and other mineral wealth, it can easily build up extensive industries useful in peace and war. If a country has rich lands, their agricultural produce will help in making the people self-sufficient and prosperous. Political progress is made more easily in a country that is rich and prosperous than in one that is not so. In

states like Nepal and Afghanistan, resources are so insufficient that their citizens cannot attain the fulness of life and development, which, otherwise, they are likely to do.

(c) GOVERNMENT. The state must have a government. It is the organization or agency through which the state expresses its will. The will of the state is the will of the people living in it. A huge population cannot carry on its affairs, except with the aid of a small body of men chosen by it. This body is the government. Some of them make laws, and they are called legislators. Others apply the laws to resolve differences between individuals, and do justice between them, and they form the judiciary. There are yet others to enforce the laws as made by the legislators and applied to the ends of justice by the judiciary. They form the executive. It is in this way that the affairs of a political community are carried on. But it is done in the manner that the people want. The body that is known as government works as the agent of the political community, i.e., the people as a whole. It derives its authority from the people and is responsible to it for its conduct. It is through the activities of this body or government that the relationship of obedience and control becomes a reality. Government is the outward manifestation of the state, because it carries out the will of the political community and takes decisions and functions on behalf of the community.

(d) SOVEREIGNTY. Sovereignty is the distinctive attribute of the state. No other human association is invested with it. It is essential for the existence of the state, and without it the state ceases to be a state. There may be associations of people with territory, and organization, that is, government; but the state alone can have these elements and sovereignty. Sovereignty implies supremacy. It consists in the supreme will of the people. It is, in other words, the will of the people whose supremacy cannot be questioned, by any individual or groups of individuals and in any matter, internal or external. It knows no limitations in respect of its authority,

and symbolizes the unity of the people. This unity and authority is expressed through government, which is supreme in all internal matters and independent of all external control.

Thus population, territory, government and sovereignty are the four component elements of the state. The state has also certain characteristics which bring out its nature. Professor Burgess, for example, explains that the state is all-comprehensive, exclusive and permanent. The state is all-comprehensive because it embraces all persons and associations of persons within the given territory. The state is exclusive, because there can be one and only one organization called the state. There cannot be more than one state in a particular area. The state is permanent because whatever the form of government may be, and however it may change from time to time the state continues to exist. It changes its government to suit the changing needs of the people. But the content of the state, that is, the supreme character of the will of the people does not change. It remains supreme as ever, because it signifies the indissoluble unity of the people. That idea is brought out by the famous English maxim "the king is dead, long live the king". It simply suggests that a king may die but the state of which he is the symbol, does not. It becomes incarnate in his successor.

DEFINITION OF THE STATE. Now we can attempt a formal definition of the state. It has been thus defined by some of the great writers on the state. "A state is a people organized for law within a definite territory"—Woodrow Wilson. "A state is a numerous assemblage of human beings, generally occupying a certain territory, amongst whom the will of the majority or of an ascertainable class of persons is, by the strength of a majority or class, made to prevail against any of their number who oppose it."—Holland. "The state is the politically organized people of a definite territory."—Bluntschli. "The state, as a concept of political science and public law, is a community of persons more or less numerous, permanently occupying a definite portion of territory, independent, or nearly so, of external control, and possessing an

organized government to which the great body of inhabitants render habitual obedience."—Garner. These are some of the definitions, and to these we may add one more, of which the Supreme Court of the United States is the author. According to it the state "is a political community of free citizens occupying a territory of defined boundaries, and organized under a government sanctioned and limited by a written constitution and established by the consent of the governed". In the light of all these definitions we may define the state as an independent political community with a government and a definite territory of its own.

There are other definitions also. But one important thing that has to be noticed about all of them is that they reflect certain points of view. The sociologist regards the state primarily as a social phenomenon, and therefore defines it differently from the way in which the jurist, for example, who regards the state primarily as a juridical establishment, usually defines it. Similarly, writers on international law emphasize in their definition certain aspects of the state, which the political scientists ignore or minimize. Again philosophical writers lay stress on certain abstract ideas in their definitions. For example, to the philosopher Hegel, the state is "the realization of the moral idea" or "the incorporation of the objective spirit". This only makes one point clear, and it is, that the state as a human institution has many contexts, viz. social, political, legal, moral and international. It is an institution, that is not only unlike all other human institutions but dominates all other human institutions.

STATE, GOVERNMENT, SOCIETY, NATION, AND NATIONALITY. It is therefore necessary to distinguish the connotation of the state from that of others with which it is sometimes identified or equated. As has been pointed out earlier, it is often identified with government. Government is the organ of the state, the agency through which the will of the state is expressed, the organization through which the ends or purposes of the state are realized. The state is the sovereign community occupying a fixed territory. The state

has an abstract entity; the government has a tangible form. Government changes, but the state does not. The state is permanent, in a way coeval with man. Government as a small body of men exercises the power that the state or the sovereign political community delegates to it.

The state can be easily distinguished from the society. Society has no reference to and lays no emphasis on territorial occupation. It refers to man alone and not to his environment. But its significance is much wider than that of the state. Society applies to all human communities, civilized or uncivilized, organized or unorganized, modern or primitive. It also covers the entire fabric of human relations and the whole range of human activities, whether political or religious, domestic or economic. The state, on the other hand, suggests only political relations of man. Besides, the state has reference to territory, as a primary fact of its existence.

We have also to distinguish between the state and the nation. They are generally confused in the common usage. But they bear different meanings. The state is a politically organized people which is sovereign. Nation has a wider meaning. It implies the state plus a deep spiritual sentiment, that the entire population is one single community. Nation has reference to a racial or ethnographical significance. Lord Bryce said: "a nation is a nationality which has organized itself into a political body either independent or desiring to be independent." He defined nationality as "a population held together by certain ties, as, for example, language and literature, ideas, customs and traditions, in such wise as to feel itself a coherent unity distinct from other populations similarly held together by like ties of their own". John Stuart Mill thought that "a portion of mankind may be said to constitute a nationality if they are united among themselves by common sympathies which do not exist between them and any others—which make them cooperate with each other more willingly than with other people, desire to be under the same government and desire that it should be government by themselves or a portion of themselves exclusively." Thus the Welsh and the Scotch in Great Britain, and the French in Canada may

be regarded as distinct nationalities. But when these merge their distinct entities with others, in order to form a single political community and a sovereign state, a nation comes into being. The British and the Swiss are nations. The British nation comprises the English, the Scotch and the Welsh nationalities. Similarly the Swiss nation comprises the German, the French, and the Italian nationalities. Nationality has reference to certain common sentiments and sympathies, history and traditions, religious and political associations, language and culture.

"ONE NATIONALITY, ONE STATE". Independent political unions may be the natural fruit of nationality. After the first world war many European nationalities which had no independent political unions of their own pressed their claims for independent states on the basis of the principle of "self determination". Some had their claims conceded, as in the case of the Poles. Others like the Czech and Slovaks merged their nationalities to form a single political union. In modern times the tendency of most peoples, who form distinct nationalities, is to aspire either to be politically independent, or to be accorded a large measure of political autonomy, when they are united with other nationalities in the same state. John Stuart Mill in his *Representative Government* said: "It is, in general, a necessary condition of free institutions, that the boundaries of governments should coincide in the main with those of nationalities." He even denounced the desirability of a state with many nationalities and asserted that "free institutions are next to impossible in a country made up of different nationalities". But that represents an extreme view. If Mill's contention was correct, Switzerland composed of three distinct nationalities, viz. the French, the German, and the Italian would not be regarded as the finest specimen of modern democracies in the world, as Lord Bryce put it. Further, eminent thinkers like Lord Acton have opposed the view. According to Lord Acton, "the coexistence of several nations under the same state is a test, as

well as the best security, of its freedom. It is also one of the chief instruments of civilization; and as such it is in the natural and providential order, and indicates a state of greater advancement than the national unity which is the ideal of modern liberalism."

But it is hard to determine whether any given nationality should have a state of its own. "One nationality, one state" is an agreeable idea, but very often, as history shows, it is difficult of accomplishment. Neither is it desirable. In Europe particularly there are so many distinct nationalities that if every one of them were allowed to form states of their own, some of the outstanding states of Europe would be broken up, and a congeries of petty states would come into being. That may mean hampering of progress in so many fields of life and the downfall of Europe. Today thinkers look forward to a final unity of mankind. Formation of bigger and bigger political unions is the order of the day. In this adventure the common well-being of man, rather than the well-being of any single community or nationality is the only urge, the only motivating force. The right of nationality to its language, culture and institutions deserves particular consideration no doubt. But it must not be forgotten that these benefit by contact and even by blending with equally vigorous or more vigorous languages, cultures and institutions. The union of the Scotch, the English, and the Welsh is a case in point. If however, that is not possible, the claims of nationality may be satisfied by federalism. But in no manner should the claims of nationality to its distinct language, culture, and institution, be allowed to stifle the growth of a greater unity and common well-being of man.

THE ORGANIC NATURE OF THE STATE. Some of the modern thinkers like Bluntschli and Spencer have spoken of the state as an organism. Bluntschli thinks that like the human organism the state has a body and a soul, i.e. material elements and vital forces, different functions assigned to different members, and growth and development. He regards

the state as having a moral and spiritual personality with a masculine character, as opposed to the church which is feminine. Herbert Spencer compared the society to an organism. He pointed out that like an organism the society grows and develops. As it grows and develops its parts become more complex, and the functions varied. But the parts with their functions both of the society and the organism do not separate with the differentiation of the structure and functions; they form an integrated whole. Just as the different parts of the body like the ears, the hands, the legs and the head are interdependent and form one unit even though they have distinct functions of their own, similarly the society with its different parts which have distinct functions is one integrated whole. He pursues the analogy further and says that corresponding to the sustaining system, the distributory system, and the regulating system of a living body the society has its own system of industries, of transportation, and of civil and military government. But there is one significant point of difference according to him. In a highly developed living organism consciousness is concentrated in one definite part whereas in the society it is spread over the entire mass. Therefore, according to Spencer the good of the component parts and not of the entire body politic should be the end of the society. That forms the basis of his individualism. In conclusion it may be said that the organic analogy is valuable in so far as it focusses attention on the evolutionary nature of the state, and emphasizes the unity of the state as consisting in the dependence of individuals on each other, and on the state as a whole. It brings out, in other words, the inseparable connection of the individual with the state, and of the state with the individual. But the analogy becomes absurd when the state is identified with a living organism, part by part, and their functions are similarly viewed as identical. After all analogy is not proof, and some of the essential features of a living body are not found in the body politic. Further as Dr. Leacock points out "the organic theory in telling us that our institutions grow and are not made, hardly offers a practical guide to political conduct". Again

a parallelism does not warrant any scientific deductions. It only implies that the nature of the state is evolutionary like that of a living organism.

THE IDEA AND THE CONCEPT OF THE STATE. A distinction is often made between the idea and the concept of the state. The idea of the state connotes the state as it ought to be, the state in its perfect form. The concept of the state means the state as it is at any historical time. It signifies the state with its attributes and constituent elements actually functioning. The idea of the state, on the other hand, is the perfect model of the state, which we visualize, and in relation to which the existing states are only approximations. This ideal form is the essence which the states in historical times have sought to embody. "To the Greeks the ideal was to be sought in the perfected form of the city-state. In our own day the national state has served as the embodiment of perfect political organization. But a wider ideal is conceivable in the form of the world state or state universal."—Leacock.

Chapter III

THE ORIGIN OF THE STATE

DIFFICULTY IN TRACING THE ORIGIN OF THE STATE. An inquiry into the origin of the state is essential for the study of the state. How did man come to live in states, that exist everywhere in the world? How did government and law arise? Why did people choose to live under a form of authoritative control? We have to turn to history for an answer to these queries. History reveals how the states and their governments have come into being. But history cannot reveal the entire story of man's existence on this globe. It has no records of the earliest phases of man's life. Up to a point we can rely on history as to how man formed states and governments. Beyond that point sciences like Anthropology, Ethnology, and comparative Philology may throw some light. But even these do not take us far, because they are of recent growth. Therefore thinkers and writers of Political Science have resorted to speculation, to explain the origin of the state.

There is no doubt that man formed social institutions instinctively. They came into being almost with his existence. For a very long time of which History has no record, they must have developed spontaneously. Various factors must have aided in their development. And it is very difficult to separate or draw a line of distinction between these institutions at that nascent stage. But gradually they assumed distinct forms. Groups of men professing a common kinship called themselves tribes. Fear of the supernatural and blind belief or superstition assumed the form of religion among them. The need for order and protection became the basis of their state. "Like other social institutions it (the state) arose from many

sources, and under various conditions, and it emerged almost imperceptibly."[1]

DIFFERENT POINTS OF VIEW ABOUT THE ORIGIN OF THE STATE. Whatever be the origin of the state, it has been, like the state itself, envisaged from different points of view. The historian explains the orign of the state by reference to a process of social development. The moral philosopher finds its origin in the need for the realization of the ethical ends of life. The political scientist points to the earliest form of obedience and control, as the basis of the state. Others suggest that it was the result of divine will, and yet others that it arose out of the conscious effort of men to set up a form of social control. Thus there are a number of theories, that seek to explain the origin of the state and of these the best known are the theory of Social Contract, the theory of Divine Origin, the theory of Force, the Metaphysical or Idealistic Theory, and the Evolutionary or Historical Theory. Let us take them up one by one, and see what they have to say about the origin of the state.

SOCIAL CONTRACT THEORY. The theory of Social Contract has a long history. It can be traced to the time of the Greeks. It is reflected in the philosophy of the Sophists. Plato in his *Republic* makes one of his characters refer to a contract as the origin of political Society. In the Old Testament King David is said to have made a Covenant with the elders of Israel before he was annointed as their King. In ancient Indian political thought the idea of contract appears in a rather nebulous form in the Mahabharata (Shanti Parva) and in the Brahmanas. The Romans regarded consent as the basis of law, and that way their political ideas were in line with the theory of contract. It was only during the Middle Ages, about the eleventh century that the theory assumed a definite form. Feudalism based on the twin principles of loyalty and contract, between the feudal lord and the vassal established it on sound foundations. From the eleventh to the

[1] *Introduction to Political Science*—(Gettel Ch. V).

sixteenth century it was widely known in Europe. In the seventeenth and eighteenth centuries it was utilized variously to support royal absolutism, popular liberty, or constitutional monarchy. Thinkers like Hobbes, Locke, and Rousseau adopted the theory not merely to give shape to their political ideas, but also to explain the origin of society and the state.

There are three common elements in the Social Contract theories of Hobbes, Locke and Rousseau. The first is the state of nature, which has been differently depicted by each of them. The second is the contract, about the manner of which each of them holds a distinct view. The third is the sovereignty, which is again differently conceived as to its content and character. All of them assume that the past history of mankind may be divided into two periods, the first of which is prior to the institution of government, and the second, posterior to it. During the first period man lived in a "state of nature", in which there was no law of human imposition. He followed his urges and passions, and was subject to certain considerations that were instinctive. These are spoken of as inspired by the law of nature or natural law. In the state of nature some undefined and unwritten natural law obtained. But life in the state of nature was not agreeable, and men decided to form a union, a civil society or body politic on the basis of common consent and certain understandings among themselves. Thus they changed their status from free natural individuals into members of a civil society and the state. They now submitted to the joint control of all, and received the benefit of joint interest of all in their common security and freedom. Human law was substituted for natural law and the individual in submitting to social duties found himself clothed with social rights. That, in outline, is the theory of Social Contract.

HOBBES. Now let us take up the theory of each separately. Thomas Hobbes outlined his theory in his book *The Leviathan* published in 1651.[1] He lived in England during the period of the Civil War and the Commonwealth. It was a period of great disturbance and unsettlement. People suffered, and their miseries deeply touched Hobbes. In an atmosphere like this

he outlined his theory of state on the basis of the Social Contract theory.

Man, according to Hobbes, is an altogether selfish and self-seeking creature. He is, by nature, anything but a social animal. All his actions are prompted solely by his appetites and desires. Goaded by his desires and appetites, he constantly fought his fellow men. The state of nature, in which he originally lived was, consequently, a state of war. It was a state of "continual fear and danger of violent death; and the life of man solitary, poor, nasty, brutish and short". In this condition of life self-preservation was most uncertain. It was however the urge of self-preservation that made him find a way out. This he found in a covenant of each with all. Every man is supposed to have approached every other man and said to him: "I authorise and give up my right of governing myself to this man or to this assembly of men, on this condition, that thou give up thy right to him, and authorise all his actions in like manner." This was their covenant or contract. With this contract the people wiped out the state of nature, which was a state of ceaseless conflict and uncertain existence, and established civil society and the state. By this contract every man resigned his right of governing himself in favour of a man or body of men, and made him/them his sovereign. They resigned their rights unconditionally and irrevocably. The sovereign was, therefore, to rule absolutely. He was not a party to the covenant or contract. The people who formed the contract, and thereby the civil society and the state, had no right to resist the sovereign even if he ruled arbitrarily or tyrannically. For, if they resisted the sovereign and threw him out, the civil society and the state would come to an end, and the state of nature would return. Then war and bloodshed would be unleashed and people would be miserable as in the period of the English civil war.

Hobbes thus explained the origin of the state, and enunciated his theory of absolute sovereignty of the king. He made no distinction between the state and the civil society in respect of their origin. They came into existence, according to him, by the same act and at the same time. That led to some

confusion of thought. The state and society are not identical. They have different bases; and whereas the society covers the entire sphere of human life, the state does not. Further he did not see the distinction between the state and the government, between what we call the political and legal sovereignty. He confused the will of the people with that of the ruler; and therefore, equated the state with government. The ruler or government is only the agent, and not the same as the state.

LOCKE. John Locke like Hobbes was an Englishman. He outlined the theory of Social Contract in his *Two Treatises of Civil Government,* published in 1690. That was the period of the Glorious Revolution of England (1688). He was much impressed by the results of the Revolution. The Revolution established constitutional monarchy in England. His thought therefore is coloured by the political phenomena of the times. According to him the state of nature was not a state of war and misery. In the state of nature men had certain rights based on the law of nature. The law of nature inculcated a sort of respect for each other's life and property. But there was insecurity, because impelled by their self-interest, the people often forgot to respect the law of nature and disregarded each other's rights. There was, to use his own words, "want of an established, settled, known law, the law of nature being obscured; since men are biassed by their interest, as well as ignorant for want of study of it". Thus people not only failed to obey the law of nature; there was no impartial judge to tell them of their lapses, and restrain those who violated the law of nature. People found the state of existence very unsatisfactory, since each individual was the judge of his own action, and the "executioner" of the law of nature. The need for an impartial judge to interpret the law, and a superior authority to enforce it led them to resign their own right of judging themselves to a common man or body of men, who became a party to the agreement. This man or body of men became the sovereign, and with the creation of the sovereign, the state came into existence. Men had resigned a part of their rights, that is, the right of judging themselves and

enforcing the law of nature, in favour of the sovereign so that the sovereign might act as an impartial judge. They had therefore not resigned all their rights, and a part of their rights that they had resigned was not without condition. The condition was that he must act as an impartial judge, and protect the rights and liberties of all by means of his superior authority. The sovereign could thus claim only limited authority, and if he violated the condition the people could withdraw the authority vested in him. The sovereign could be deposed. Thus the theory of Locke is made the basis of limited constitutional monarchy.

Dr. Leacock thinks that "the contract as presented by Locke does not precisely correspond to the governmental compact, since it not only establishes the authority of the monarch, but also joins the members of community by mutual covenant into a body politic". The merit of the theory lies in the distinction drawn between the state and the government, between the political and legal sovereignty. Hobbes did not distinguish between these, and failed to recognize that the exercise of sovereignty depended ultimately on the will of the people to obey. The will of the people is the will of the state, which determines the action of the government.

ROUSSEAU. Jean Jacques Rousseau was a Frenchman. He lived during the years preceding the French Revolution of 1789. His work *Social Contract* published in 1762 created a revolution in contemporary thought. The book opens with these memorable words: "Man is born free, but is everywhere in chains. How did this come about? I do not know. What can make this legitimate? This I think, I can explain." The answer is the Social Contract. Man, according to him, originally lived in a state of nature. The state of nature was one of almost idyliic happiness. Men were simple, virtuous, and considerate towards each other, and enjoyed "natural liberty" and "unlimited right to everything". Unfortunately someone enclosed a piece of land and called it his own. That was the beginning of private property. With the beginning of private property and growth of population, man's miseries began.

There was conflict of interests resulting in violence and bloodshed. Man was impelled to renounce his "natural liberty" and form a union with his fellows to establish a system of civil liberty. That was done by individuals uniting to throw their entire rights, liberties and powers into a common pool as it were, and handing it over to the community as a whole. Thus arose "a form of association which may defend and protect with all the force of the community the person and property of each associate, and by which each, being united to all, yet only obeys himself and remains as free as before". This is the social contract which is a covenant of each with all. In consequence of the contract emerged the General Will, which became the sovereign. To use his own words: "the social contract gives to the body politic absolute power over its members; and it is this same power which, directed by the general will, bears the name of sovereignty." The ruler or government is merely a commissioned agent of the General Will, and can be deposed if the General Will demands it.

The central idea in Rousseau's theory is the doctrine of the General Will. General Will is to be distinguished from the will of all. Will of all is a mechanical aggregate of individual wills. General Will, on the other, is one common will into which the individual wills have merged. A representative assemby cannot adequately express it. It can be expressed only in a mass meeting of the people. It is the will of the entire people, and complete unanimity is its chief characteristic. It is therefore the true sovereign, and possesses absolute power. It cannot but will the common good, and cannot make a mistake. Thus Rousseau, through his doctrine of General Will attributed sovereignty to the people and enunciated a theory of democratic government.

HOBBES, LOCKE AND ROUSSEAU COMPARED. "With Rousseau the doctrine of the Social Contract, which in the hands of Hobbes was made a weapon of defence for absolutism, and with Locke a shield for constitutional limited monarchy, becomes the basis of popular sovereignty."[1] Further,

[1] *Elements of Political Science*, Leacock.

comparing with Hobbes and Locke we find that Rousseau like Hobbes advocated absolute and inalienable sovereignty; and like Locke differentiated between political and legal sovereignty. But unlike both Hobbes and Locke, Rousseau enunciated a theory of popular sovereignty. To Hobbes the state of nature was a state of ceaseless war, to Locke it was one of comparative peace but to Rousseau it was one of idyllic happiness. The contract according to Hobbes and Rousseau was unconditional and irrevocable; to Locke it was conditional and revocable.

CRITICISM OF THE THEORY OF SOCIAL CONTRACT. The theory of Social Contract made a significant contribution to contemporary political thought by emphasising the element of consent as the basis of government. It thus prepared the way for democratic rule. But the weakest point of the theory is that it has no historical basis. The state of nature and the contract are imaginary, and have no foundation in the facts of history. It is idle to suppose that any such deliberate action took place for the first creation of the state, as has been envisaged by the theory. If it did, the people must have known government before they attempted to create one. For, contract presupposes a system of law to support it, and the will of the community behind it.

Further the theory postulates that the contract was made by the individuals. In early times individuals had no status as apart from the family. Family and community, rather than the individual as such, constituted early society. Laws, customs, obligations, indeed everything was communal. The progress of human society has been achieved by the process of disintegration of the community and the family, and the substitution of the individual. "Through all its course" as Sir Henry Maine pointed out "it has been distinguished by the gradual dissolution of family dependency and the growth of individual obligation in its place. The individual has been steadily substituted for the family as the unit, of which civil law takes account." Hence it is absurd to think that in the earliest days of man's life on this earth, the individuals lived

by themselves, and entered into a contract among themselves in order to create a civil society or state.

It is equally absurd to think that people possessed natural rights in the state of nature, which was pre-political. Rights imply duties, and they arise from the consciousness of a common well-being. People in the state of nature did not possess this consciousness, for there were no duties and obligations. They followed only their own urges, and these cannot be the basis of any rights, as we understand them.

THEORY OF DIVINE ORIGIN. The theory of divine origin attributes the origin of the state to the will of God. In the Old Testament God is looked upon as the direct source of royal powers. He is regarded as the creator of kingship, and as selecting and anointing and dismissing kings. King Moses is said to have received the divine commission to rule over his people directly from God. The king among the Jews was the agent of God, to whom he was responsible. He was not responsible for his acts to the people.

The Greeks and the Romans did not attribute the origin of the state to the will of God. But with the spread of Christianity the idea gained strength. The church fathers based their theory on the saying of St. Paul—"Let every soul be subject unto the higher powers; for there is no power but of God: the powers that be are ordained of God." The church fathers thought that government was formed by God because of the fall of man. Originally man lived a life of virtue and innocence. As he became sinful government was necessary. The king was God's representative on earth. If the people were good they had a good king, if they were bad, their king too was bad. This theory ultimately took the form of the divine right of kings, which was much in vogue in the sixteenth and seventeenth centuries. The Stuarts of England claimed that they ruled by right divine. James I used to say: "Just as it is blasphemy to question what God can do or cannot do, so it is blasphemous to ask what king can do or cannot do." Louis XIV of France used to say: "the state—that I am." The theory was used to justify royal absolutism.

This theory received the hardest blow from the exponents of the Social Contract Theory, because they emphasised consent and a deliberate choice on the part of the people, as the basis of government. Further it is superstition to regard that the divine will is the origin of the state, or that because of the sins of man God created the king. No one questions the divine will as the ultimate cause of creation. But to say that God selects this man or that man as king, and rewards and punishes people through good or bad kings is contrary to human reason and commonsense.

THE THEORY OF FORCE. The theory of force explains the origin of the state by reference to physical force. There is no doubt about the fact that government is the outcome of human aggression. We can trace the beginnings of states to the conquest and subjugation of less powerful clans and tribes by the more powerful ones. Kingdoms and empires have risen as a result of ruthless conquest. The church fathers in the Middle Ages pointed to this fact to discredit the Empire. Pope Gregory VII wrote (1080 A.D.): "Which of us is ignorant that kings and lords have had their origin in those who, ignorant of God, by arrogance, rapine, perfidy, slaughter, by every crime, with the devil agitating as the prince of the world, have continued to rule over their fellow-men with blind cupidity and intolerable presumption?" Later on the Individualists advocated that struggle for existence was the nature of man, and the fundamental fact of society was that the stronger should prevail against the weaker. The Socialists also thought on similar lines when they said that the state was the outcome of the exploitation of the weak by the strong, of which the net result is that a part of the community robs the other of its just reward. Modern German writers like General von Bernhardi pointed out that war is a biological necessity of the highest importance. "Might is the supreme right" he says, "and the dispute as to what is right is decided by the arbitrament of war. War gives a biologically just decision, since its decisions rest on the very nature of things."

Unmitigated force may have been the efficient cause of the

state coming into existence, but it is no justification of the continuance and development of the state. Force lies at the basis of the relationship of obedience and control, and wherever this relationship is established the nucleus of the state is formed. Further, as Trietschke said, "the state is the public power of offence and defence, the first task of which is the making of war and the administration of justice." But though force is necessary for purposes of offence and defence, law and justice, yet it alone cannot be regarded as adequate, if it lacks moral support. Force does not create law, liberty, or rights. They have essentially a moral basis; and will, not force, is the basis of the state. "Man is a moral agent," as T. H. Green pointed out "because he possesses a free will—a will to freely determine his own good". That, viz., his own good—is the basis of all actions and institutions of man. The state like any other human institution arises and continues as a result of this supreme consideration, which is moral in character. Physical force is only a contributing factor.

TRUE ORIGIN OF THE STATE. These are the speculative theories which emphasise some single factor in explaining the origin of the state. But the state like some other human institutions has a long past, almost as long as human life itself. It is a product of countless ages, and numerous circumstances. A host of factors must have contributed to its origin and growth. As Dr. Leacock points out "the state is not an invention: it is a growth, an evolution, the result of a gradual process running throughout all the known history of man, and receding into the remote and unknown past". Naturally, therefore, it is difficult to single out the factors that have contributed to the origin of the state. They are often so indistinct, and so deeply embedded in the nature and environment of man that they cannot be disentangled and traced. As Prof. Gettel put it "the origin of the state is difficult to discover. Like other social institutions the state arose from many sources and under various conditions, and it emerged almost imperceptibly. No clear-cut division can be made between earlier forms of social organization that are not states

and later forms that are states, the one shading off gradually into the other. However, it is possible to indicate the chief influences that have created the state, and to outline, in general, its distinguishing features. Aside from these influences of the physical environment that cause mankind to aggregate in certain places, that separate one group from another, and that create ethnic ties among the individuals of the groups, thus paving the way for state-formation, the following are among the chief forces in state-building:

1. Kinship
2. Religion
3. Need for order and protection.

"Each of these tends to create that unity and organization which the state requires; and the existence usually of all these forces in early social groups explains both the reasons for state origin and the form in which it first emerged."[1]

KINSHIP. The earliest basis of social organization was kinship. Kinship meant relationship of blood. That is the original bond of union and sanction for authority. The primæval and simplest form that it took was the family, consisting of the father, mother, and the children. The father controlled, and all the members of the family obeyed him. That is how the relationship of obedience and control came to be first established in the family. It is often suggested that the tribe was the original unit, and it broke up into clans and families subsequently. Whatever be the course of development whether families widened and integrated into clans and tribe, or the tribe split into clans and families, there is no disputing the importance of the fact of kinship. And kinship founded on blood relationship was embodied in the family, which was the unit and the earliest form of social organization. "The control exercised by a father over his children, which presently expands into the control of a patriarch over his descendants,

1 *Introduction to Political Science*—Gettel p. 41.

was supposed to represent the origin of human government."[1] That is the modern view of the origin of the state. It has a basis in the facts of History and Anthropology. Aristotle who is regarded as the father of Political Science and who lived more than twenty-two centuries ago wrote that "the family arises first . . . when several families are united and association aims at something more than the supply of daily needs, then comes into existence the village . . . when several villages are united in a single community, perfect and large enough to be nearly or quite selfsufficing, the state (polis) comes into existence." The process of origin and growth thus outlined by Aristotle first, has been accepted by all subsequent thinkers and writers till the modern times.

PATRIARCHAL AND MATRIARCHAL FAMILIES. But certain controversies have arisen in regard to the form of the family to which origin of the state is traced. There are two well-known types of family organization, viz., the Patriarchal and the Matriarchal. Which is the earlier and which is the later? In the patriarchal family, the patriarch or the eldest male parent—the eldest ascendant, rules the household. He has absolute power over his children and the slaves, which extends to life and death. He is the sole custodian of family possessions, which are held and enjoyed in common. Descent is traced through father, and the families who form one clan or one tribe have a common ancestor.

This form of family organization used to be claimed as the oldest and most elementary form. But modern researches have shown that there is another type of family, called matriarchal, which is likely to have existed before the patriarchal family, and may be regarded as the first form of social grouping. Describing the group-life of some Australian and Malayan tribes, Sir Edward Jenks says, that "the real social unit of the Australians is not the tribe, but the totem group. A totem group is primarily a body of persons distinguished by the sign of some natural object such as an animal or a tree,

[1] *Elements of Political Science*—Leacock p. 38.

who may not intermarry with one another. Snake may not marry snake. Emu may not marry emu. This is the first rule of savage organization.... The other side of the rule is equally startling. The savage may not marry within his totem, but he must marry into another totem specially fixed for him. More than this, he not only marries into the specified totem but he marries the whole of the women of that in his own generation... of course it must not be supposed that this condition of marital community exists in practice. As a matter of fact each Australian contents himself with one or two women from his marriage totem." But this is reminiscent of the conditions when promiscuity in sex relations was the rule, and the usual relationship of husband and wife did not exist. Descent could be traced only through the mother, as far as there was, any recognition of kinship or blood-relationship at all. Apart from descent being traced through the mother, property also passed in the female line. The Nair community in Malabar still has the matriarchal family system, and even the right to their throne passes through the female line.

PATRIARCHAL FAMILY AS OLD AS THE MATRIARCHAL. There is no doubt that the matriarchal family organization must have been in vogue in ages of remote antiquity. So too perhaps the patriarchal family. It is however difficult to accept that the matriarchal family was the original, and the patriarchal family developed from it. There is nothing to prove this contention except the assumption that the earliest sexual relations of man were promiscuous and children knew only the mother, and not the father. Besides, in respect of the matriarchal family, it cannot be supposed that the female ruled and the rest obeyed, in the same manner as in the patriarchal family the patriarch ruled and the rest obeyed. We can therefore conclude that in the primitive society no single form of family existed. Patriarchal family must have existed side by side with the matriarchal family, and it is not possible to assert that the one is earlier in age than the other. "It is sufficient to know that some form of family life and some ties

of kinship have preceded organized political life, and that those peoples who have contributed to modern political ideas, and created modern states were organized on the basis of the patriarchal family; and, from this as a model, developed the authority and organization of the state." The rule of the patriarch over the family, and of the chief over the tribe, preceded the rule of the king over the kingdom and of the people over the national state. Early kings were kings of their people, not of their land. Like the families, the tribe had a common ancestor. Their bond of unity was common kinship.

RELIGION. Inseparably associated with kinship was religion in the formation of the state. Primitive man, had a dread for the supernatural. He could not understand the phenomena and forces of nature. He found himself in the midst of the storms and the thunder; the clouds, the sun, the moon and the stars; the rivers and the seas, the changing seasons and birth and death; and he felt overwhelmed by their variety, fury and pervasiveness. He deified them and worshipped them. Thus started nature worship. In his daily affairs he had the highest regard for the patriarch, whose word was law, whose wisdom was never challenged, and whose authority was always obeyed. The spirit of the powerful patriarch was naturally worshipped after his death. Thus nature worship and ancestor worship were the twin forces of religion in early society. Each tribe had its own form of religion. Tribal customs, discipline and solidarity arose as a result of it. The tribal chiefs and early kings were also the high priests of their people. Authority was thus associated with religion, and bore the mark of divine sanction. Religion became "the sign and seal of the common blood, the expression of its oneness, its sanctity, its obligations".[1] Early laws had the sanction of religion. Thus religion helped in the formation of the state by strengthening the unity of the tribe, the authority of its chief, and the sanctity of its laws and customs.

[1] Wilson, *The State*, p. 15.

NEED FOR ORDER AND PROTECTION. (Side by side with kinship and religion the need for order and protection led to the formation of the state. A large assemblage of people, even though they be of the same clan and tribe, and bound by a common kinship and religion could not live in peace without some measure of co-operation and understanding. As they came into contact with each other all sorts of problems and clashes of interests arose. Interests of families had to be adjusted. Conflicting claims had to be decided. Ownership of herds and pastures, and also of household goods had to be regulated. When tribes settled down on definite territories and took to agriculture, questions of common holding and cultivation gave rise to misunderstanding and quarrels. These had to be resolved.

Conditions of living in groups, however small or large created the need for control and regulation. Customs and the decisions of patriarchs and chief of clans and tribes assumed the form of law in the early society. The control exercised by the heads of the families, clans and tribes became sanctified by the association of religion. Besides the needs of defence changed the character of the heads of families, clans and tribes. In early times wars between tribes and clans were frequent, because they moved from place to place frequently. They led a pastoral life and had not settled down on territories and taken to agriculture. In that mobile condition when fighting for purposes of self-protection and aggression was a vital necessity for the tribes, the tribal chiefs became the leaders in war. War led to better organization and more effective co-operation. Further, it raised the importance of the tribal chief, and increased his power and control over the tribes. The chief of the tribe became the king of his people; and when territories were conquered and his people took to agriculture and settled ways of life, he became the king of the land. "The phrase—war begot the king—is at least a half truth, since military activity was a powerful force, both in creating the need for authority and law, and in replacing earlier family organizations by systems more purely political. Successful war leaders have become kings and nobles from times pre-

historic, and the influence of warfare in creating states can be traced from remote antiquity to the establishment of Germany and Italy in the last century."[1]

HISTORICAL VIEW. Thus the needs of internal peace and order, and of external war and protection against foreign foes created a sense of co-operation and cohesion among the early tribes. Their laws and customs in times of peace and war gradually became more definite and stable. As they became more and more alive to their common needs the urge for mutual co-operation and common understanding increased. Co-operative endeavours and organized activities developed a sort of political consciousness among the people, and with that emerged the state.

But it is impossible to indicate when and at what stage of human history the state came into being. The general process by which it came into existence is fairly definite, and has been outlined above. Bonds of kinship and religion consolidated the tribe, and established the authority of the tribal chief. Needs of war and peace, of internal order and security, created a political consciousness. All these combined to give rise to the state in its elementary form. From crude and simple beginnings, when kinship and kingly status were indistinct, and the political and religious authority was undifferentiated, the state slowly emerged into a distinct form of human association, at first embodied in the king and his government, and then in the people, who ultimately became sovereign. Considerations of family and religion were superseded by patriotism. That is the historical view of the origin of the state.

[1] Gettel, *Principles of Political Science*, p. 47.

Chapter IV

SOVEREIGNTY

AN EMINENT professor of Political Science has observed that the concept of sovereignty is the basis of modern Political Science. It underlies the validity of law, and determines all international relations."[1] Sovereignty distinguishes the state from all other associations. There can be no state without sovereignty. Sovereignty connotes absolute, supreme, and indivisible authority or power. Bodin in his work *De la Republique* published in 1576, for the first time defined the concept of sovereignty. Grotius in his book *De Jure Belli ac Pacis* published in 1625, further discussed it. Subsequently almost every thinker and writer on the state, and notably Rousseau, Austin, Maine and Laski have elaborated it, analysed its content, and explained its full implications. Simply stated, the theory of sovereignty is this: that sufficient degree of unity exists among a people, who organize themselves into a form of association, create a government, and enforce laws. Such an organized people must have no limitations to its external independence, and must be internally free to carry out its will. It must have a person or body of persons whose commands receive obedience, and who can, if necessary, execute those commands by means of force.

EVOLUTION OF SOVEREIGNTY. Sovereignty as an attribute of the modern state is the result of historical evolution. Prof. Leon Duguit summarises this evolution in the following words: "Like most legal institutions under which European civilization has developed, sovereignty goes back in its origin to Roman law. During the feudal period it was

[1] Gettel, *Political Science* p. 93.

almost completely eclipsed. Its appearance is a modern phenomenon. It was the action of lawyers who mingled royal power with the Roman imperium and feudal lordship to make the sovereign power of modern law. In the 16th century Bodin outlined its theory; he made of sovereignty a personal possession of the king. In 1789 the nation dispossessed him."[1] The Roman Emperor possessed full sovereignty. He claimed universal obedience in matters spiritual and temporal. Emperor-worship was the state religion. But the rise of Feudalism after the destruction of the Roman Empire put an end to such claims. In feudal society the rulers and the ruled had their claims integrated into a system of well understood rights and duties. There was the Church which claimed supremacy even over the rulers and their subjects. The rivalry between the Church and the Empire, the Reformation, and the Thirty Years' War contributed to make the king supreme in his dominion. The English King, Henry VIII, for the first time, overthrew the authority of the Pope and made himself the head of the Anglican Church. Similarly in the countries of Western Europe the supremacy of the king in religious matters was established as a result of the Thirty Years' War (1618-48). Kings of England and France claimed absolute authority. James I and Charles I of England thought that they ruled by right divine; and "I am the state" said Louis XIV of France. But the English Civil War and Revolution, and the French Revolution divested the king of his absolute authority. To the people passed that authority, and the people became sovereign instead of the king. Today therefore the political community and not the ruler constitutes the sovereign state.

The political philosophers and lawyers also have done much to develop the theory of sovereignty. In France in the 16th century Bodin gave, for the first time, a clear-cut idea of sovereignty. He defined sovereignty as "supreme power over citizens and subjects unrestrained by the laws." According to him the chief function of sovereignty is the making of laws,

[1] *Law in the Modern State*, p. 2.

from which the sovereign himself is free. But he is not free from all laws. His will is restricted by laws of God, of nature and of nations. He was an absolutist, but he gave a theory of what we call a legal sovereign. Hobbes later on in England followed the absolutist lead of Bodin. In his theory of Social Contract he made the sovereign absolute and supreme in everything. The sovereign's will was law, which was not binding on him.

Locke gave a different theory of sovereignty. He avoids the use of the word sovereignty and uses "supreme power" instead. But the supreme power of Locke is not absolute. It functions for limited and definite purposes. "There can be but one supreme power," he says, "which is the legislative, to which all the rest are and must be subordinate; yet the legislative being only a fiduciary power to act for certain ends, there remains still in the people a supreme power to remove or alter the legislative when they find the legislative act contrary to the trust reposed in them". According to Locke, therefore, there are two supreme powers, viz., the people and the law-making authority. Of these two the power that is ultimately supreme is the people, while the law-making authority acts on its behalf as supreme power, on trust.

Rousseau outlined the theory of sovereignty of the General Will. He regarded General Will as absolute, infallible, indivisible, and inalienable. It cannot but will the common good, and in willing the common good it cannot make a mistake. Hence obedience to it is unqualified, and its power, unlimited and absolute. Rousseau was thus an absolutist like Hobbes, only with this difference that Hobbes made the king absolute, while Rousseau made the people absolute.

After Rousseau, Bentham and Austin outlined and emphasised the legal aspect of sovereignty. Green and Bosanquet exalted the sovereignty of the state, but related it to a moral end. The supreme power was justified by the end that it serves. In recent years the growth of political pluralism has shaken the concept of sovereignty to its foundations. The domination of groups and associations in a modern society, it is argued, cuts at the very root of the monistic concept of sovereignty.

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All authority is federal, interrelated, and pluralistic; not unitary, absolute and monistic. That is the challenge that the modern sovereign state faces today.

The content of sovereignty in strict theory is power that knows no legal limitation. "I understand by it", said Prof. Burgess, "the original, absolute, unlimited, universal power over the individual subject and all associations of subjects." It really means supreme power. But in actual fact the test of supreme power is the disposition of the people to obey it. And it is easy to imagine commands, which nobody will be disposed to obey. Even in despotic monarchy, the will of the monarch is often limited by conventions, customs and religious laws. He cannot issue commands as he likes. In a democracy the ruling party has to take into account a number of factors, and social forces before attempting any legislation. It is therefore difficult to maintain that sovereignty is absolute, unlimited, and universal power.

SOVEREIGNTY DE JURE AND DE FACTO. Before we attempt an analysis of the concept of sovereignty, it is necessary to point out that sovereignty has different aspects. Sovereignty *de jure* means legal sovereignty, and sovereignty *de facto*, sovereignty in fact. Sovereignty *de jure* is authority established by law, while sovereignty *de facto* is authority actually obeyed. Very often in the process of historical evolution, sovereignty *de facto* becomes sovereignty *de jure*. A conqueror imposes his authority over a people, and in course of time as the authority becomes accepted and wins moral support of the people, sovereignty *de facto* becomes sovereignty *de jure*. According to Lord Bryce "the person or body of persons who can make his or their will prevail whether with the law or against the law, he or they is the *de facto* ruler, the person to whom obedience is actually paid." A great soldier, a shrewd priest, or a small oligarchy may compel obedience by the means respectively of conquest, spiritual power or clever manipulation. That is the origin of *de facto* sovereignty. It frequently comes into existence after a war or a revolution and gradually changes its form into *de jure*

sovereignty, if it shows its ability to continue, and wins the moral support of the bulk of the people. Then the sovereign becomes the supreme law-making authority.

LEGAL SOVEREIGNTY. The theory of legal sovereignty has been enunciated thus by Austin: "If a determinate human superior not in the habit of obedience to a like superior, receive habitual obedience from the bulk of a given society, that determinate superior is sovereign in that society, and that society (including the superior) is a society political and independent." The definition suggests two things, firstly, in every political community the sovereign is a "determinate" agency, a person or body of persons who can issue commands. All laws must issue from that source, and that source must be such as can be definitely located and contacted. Secondly, the agency must be capable of commanding obedience to its orders which it issues in the form of laws. But it is difficult to concede that the sovereign must necessarily be a tangible agency capable of definite location and contact. For, there are highly intangible factors in the shape of religious susceptibilities, moral considerations, contemporary political ideas of the people and the like, which often weigh with the "determinate superior" and influence its decisions from time to time. "Even the Sultan of Turkey in the height of his power was himself bound down by a code of traditional observance, obedience to which was practically compulsory upon him".[1] Thus at the back of the sovereign who is a determinate superior, there are agencies which are highly indeterminate, and whose authority can never be ignored. As Sir Henry Maine said, the sovereign cannot disregard, the mass of "historic antecedents, which in each community determines how the sovereign shall exercise or forbear from exercising, his irresistible coercive power". Further, it is not possible to reduce all laws into the commands of the sovereign. The English Common law is a body of regulations never expressed in the form of statutes issued by the sovereign parliament,

[1] Laski—*Grammar of Politics*, p. 51.

but existing from ancient times and constantly modified and expanded by the interpretation of the law courts. Do they not limit the sovereign's authority? To this Austin replies in the form of his famous maxim: "what the sovereign permits, he commands". But the fact of the matter is that the sovereign has no alternative but to "permit" what he cannot alter, much in the same way that one might "permit" the law of gravitation to function.

POLITICAL SOVEREIGNTY. That is the theory of legal sovereignty. The criticism reveals that the legal sovereign can neither be absolute nor unlimited. It cannot stand by itself. It has to be supported by the people or the political community, which is known as the political sovereign. Political sovereignty is the sum-total of the influences in a state which lie behind the law. It is as Bryce put it "the concentrated essence of national life, majesty, and power focussed to a point". It implies supreme public dignity,—what the Romans called *majestas*. In essence it is the plenitude of public power, or power of the people. It is behind the legal sovereign, but whereas the legal sovereign is definitely organized and discoverable, the political sovereign is vague, and indeterminate, though none the less real. "Behind the sovereign which the lawyer recognises, there is," says Professor Dicey, "another sovereign to whom the legal sovereign must bow." Thus law does not become merely the command of the sovereign. It is something more than that. It is the will of the state or political community. According to Woodrow Wilson it "is that portion of established thought and habit which has gained distinct and formal recognition in the shape of uniform rules backed by the authority and power of government". In other words law, to a great extent, comes from established custom and usage and is "shaped by the cooperative action of the whole community and not by any kingly or legislative command". This view brings out the character of the political sovereign and content of law.

POLITICAL AND LEGAL SOVEREIGN DISTINGUISHED. The distinction between the political and legal sovereign has been very clearly explained by Gilchrist. "Imagine", he says, "a small state in which the opinion of the people is expressed by a mass meeting at which every citizen is present. The expression of the opinion does not make a law. Imagine further that in this small state the body legally empowered to make laws is a House of Representatives. The opinion of the mass meeting would be of no avail legally till it was definitely drafted into legal form, and passed by the House of Representatives. A judge in the courts of the state could not apply the opinion of the mass meeting to a case which came before him, but when the opinion was embodied in legal form and passed by the House of Representatives, he would have to apply it whether he wished or not. The mass meeting represents the political sovereign; the House of Representatives the legal sovereign, for it is the body empowerd by law to issue final commands."

POPULAR SOVEREIGNTY. Political sovereignty is often identified with popular sovereignty. But popular sovereignty is not used in any real scientific sense. The phrase is confined to lay use, and means the power of the masses in contrast to the power of the classes or an individual ruler. More definitely it signifies that the people possess the power of controlling the government, through their representatives elected by adult franchise. In the United States, for example, popular sovereignty further signifies the right of the people to elect the office bearers of government be they policemen, judges, magistrates or governors. Generally speaking the idea of popular control lies at the bottom of popular sovereignty.

LOCATION OF SOVEREIGNTY. Viewed from a theoritical standpoint sovereignty must be regarded as absolute, universal, inalienable, and exclusive. The state has to be regarded as absolute because it derives its power from no other source than itself. It is universal because there is no power in and outside the state which can take away or limit

its supremacy and freedom of will. Further, sovereign power extends over all persons, associations and things within the territorial limits of the state. Sovereignty is inalienable, because a community cannot give away its supreme authority and yet remain supreme. It is exclusive, in the sense that the sovereignty of a state does not admit of partnership with, or subordination to any other state or any organization within the state, in the exercise of supreme authority. If it did, it would cease to be sovereign. In this connection the observations of Prof. Burgess are illuminating: "Power cannot be sovereign if it is limited, that which imposes limitations is the sovereign and not until we reach the power which is unlimited or self-limited have we reached sovereignty. Those who hold the idea of limited sovereignty do not indeed assert a legal limitation, but a limitation by the laws of God, the laws of nature, the laws of reason, and the laws between nations. But who is to interpret in the last instance, these principles where they are invoked by anybody in justification of disobedience to the command of the state? Is it not evident that this must be the state itself? Granting that it is the individual then it is inadmissible on principle".

If this is the view of sovereignty, where does it reside in a state? If we thought of its political aspect it resides in the entire body of the people. If we thought of its legal aspect it resides in that body which is competent to make and enforce laws. Legal sovereign, that is to say, derives its existence and power from the political sovereign. But the political sovereign or the sovereign people itself is very often an undefinable quantity. We have therefore to search for some tangible body, which is responsible for making and amending the constitution. For it is the constitution of a state that embodies the will of the people, as to how and to what ends the supreme power is to be organized and exercised. If we can discover that body, we will have, with some degree of accuracy, located sovereignty in a state. In the United Kingdom, for example, it is the King-in-Parliament, which can make and amend the laws of constitution, and indeed any laws. But behind Parliament, and more correctly the Commons, there are the electors.

So in the United Kingdom sovereignty lies jointly in the king, the peers of the realm, and the constituencies of the House of Commons. Similarly, in France it lies in the electors of the National Assembly and the Council of the Republic; and in the United States in the body of persons who act through two-thirds of the Congress and through the majority of members in the legislatures of three-fourths of the states.

In this connection President A. Lowell's views are illuminating. It would be misleading, he says, to think that people is everywhere sovereign without qualification. That would ignore the fundamental distinction between power, that is unconsciously possessed and therefore cannot be exercised at will, and power that is consciously possessed. Political power is usually distributed in a rather complex way among different bodies and individuals. In actual fact political sovereignty cannot be located in a determinate body of persons, at any given time; for, the supreme will of that body is often made up of the influences of the past, needs of the present, and hopes of the future. Hence Prof. Willoughby locates sovereignty in the sum-total of the organs competent to express that will. "In fact it is almost correct to say that the sovereign will is the state, that the state exists as a supreme controlling will, and that its life is only displayed in the declaration of binding commands, the enforcement of which is left to mere executive agents." Further, the electorate is to be distinguished from the people. There are instances in which the electorate may act as the organ of the state for the exercise of sovereignty. This happens whenever there exists a provision, according to which law may be created by a referendum or plebiscite. When so called upon for its vote, the electorate is to be considered as a legislative body. "To repeat then in conclusion" says Prof. Willoughby "all organs through which are expressed the volitions of the state, be they parliaments, courts, constitutional assemblies or electorate, are to be considered as exercising sovereign power, and as constituting in the aggregate the depository in which the state's sovereignty is located."

DIVISIBILITY OF SOVEREIGNTY. The question is

often raised whether sovereignty is divided in a federal state. In the early history of the United States the theory prevailed that sovereignty was divided between the states and the union. The United States was sovereign in respect of all the powers of government actually surrendered, and each state of the Union was sovereign in respect of all the powers reserved. But that does not suggest that sovereignty is divided, for "modern constitutionalism has tended to show that sovereignty itself is incapable of such a division. It actually means delegation of powers. The exercise of extensive power may be delegated to various governmental organs without affecting location of sovereignty. Not only does the sovereign body find it necessary to employ others to execute its commands, but almost in every country authority is delegated by the sovereign body to some person or body of persons subordinate to itself, who are thereby empowered to carry out the sovereign commands, and even exercise the sovereign power itself, sometime extending to making of rules which are law in the strict sense of the term. When the sovereign body thus substitutes for its own will, the will of another person or body of persons, it is said to delegate its sovereignty."

PLURALISTIC ATTACK ON THE THEORY OF SOVEREIGNTY. The traditional doctrine that sovereignty is absolute, unlimited, universal and exclusive, has, in recent years been severely criticised by a class of thinkers, who can be called pluralists. Briefly and generally stated their argument is this. Society comprises a large number of groups, rather than mere individuals. These groups or associations are formed on the basis of religion, politics, vocations, trade, commerce, industries etc. There are for example distinct churches, unions of labour and trade, academic bodies, guilds of engineers and lawyers, and many other associations. Most men are members and active participants in the work of several such groups. They give their loyalty to these groups, realize their interests through these groups, and identify themselves with their aims and objectives . Thus "in consequence of enormous multiplication of voluntary associations and groups for the promotion

and care of industrial, political and other interests, society has become more and more an aggregation of groups, and less and less an association of individuals." Social life is possible because of the functioning of all these groups and associations, and not of the state alone. Therefore, the state should be regarded as one, and may be the first, among many equal associations. The view of the absolute, unlimited, and supreme power of the state over all groups and individuals is irrational, and has no foundation in the facts of life. Therefore it has been suggested by men like Prof. Barker and Prof. Laski that sovereign power of the state should be surrendered and divided among the groups themselves each being allowed to legislate for itself. For example, the producers should exercise direct control over production, the distributors over distribution, and so on. This may sound very logical in theory; but in practice it will lead to conflicts and confusion. If associations are placed on a level with the state, it will be like medieval monarchy struggling with the church, the feudal barons, trade-guilds etc. for supremacy. We may conclude with the opinion of Prof. Garner. "The very recognition of autonomy demanded by pluralists for the other associations would only intensify the need of a superior power, such as the state, to protect society against the consequences of the inevitable conflicts between them, as well as to protect their own members against the possible tyranny and oppression of their non-governing bodies. One of the most important services which the state renders, in fact, is keeping within proper limits the classes and struggles between competing groups, and performing the role of a sort of referee or umpire in adjusting or reconciling their conflicting interests." Hence he says "while it is possible to conceive a better organization, in some respects, of the state, it is an exaggeration to say that the monistic sovereign has become discredited."

LIMITATIONS OF SOVEREIGNTY. The only test of sovereignty or supreme power of the state is the disposition of the people to bow to such power. There is a sense in which no power can be supreme. The most despotic monarch respects

the opinion of his subjects on certain questions. "Probably no sovereign, whether monarch or assembly ever existed who assumed and exercised the right to change any law, custom or institution at his pleasure without regard to the opinions of the mass of the population." Power is always related to the ends it seeks to serve, and these ends must have a moral appeal. They must be acceptable to the people. Besides, the principles of morality, the laws of nature, the laws of God, the fear of public opinion, international laws and agreements set limitations to the sphere of sovereignty. A British Parliament cannot think of conferring peerages on the bricklayers of England; a king like Louis XIV who boasted that he was the state would have never succeeded in forcing Protestantism on his subjects; and no international tribunal would undertake to make Chiang-Kai-shek the President of China. But these are not limitations in the strict sense of the term. For, in the last analysis, the state is the sole judge of whether a principle of morality, a divine law, or an international agreement should be honoured or brushed aside, whatever be the consequences. In other words, the limitations on the sovereign are self-imposed, and there is no other legal conscience than that of the state. Legally, therefore, there can be no limitations of sovereignty. "The same may be said of the limitations set by the state upon the manner in which its power shall be exercised, such, for example, as the method of procedure which it may have prescribed for making changes in its own constitutional organization. Such rules of procedure cannot be considered as legal restrictions upon the sovereignty of the state."

Chapter V

LIBERTY

SOVEREIGNTY AND LIBERTY ARE NOT EXCLUSIVE. In a study of the state one of the fundamental problems is the position of the individual. What is his relation to the state? How does he stand in the context of the absolute and unlimited power of the state? If the state is regarded as sovereign what becomes of the liberty of the individual? In other words if the authority of the state be absolute, how can liberty exist; and if the individual has liberty what becomes of sovereignty? It has been said very aptly that "sovereignty alone is despotism and destroys liberty, while liberty alone is anarchy and destroys sovereignty."[1] There is much divergence of views among the great thinkers as to the scope of state authority and individual liberty. It has been argued on the one hand that the state is a necessary evil. It should do nothing except maintaining peace and order, and affording equal opportunities for individuals to develop their personality. On the other hand it has been maintained that the good of the individual lies in the good of the state, and therefore the individual should merge in the state.

But sovereignty of the state and liberty of the individual are not exclusive in their scope. In fact one admits of the other and has significance in relation to the other. The state exists to maintain liberty, and liberty becomes real to the extent that sovereignty is completely organized. Similarly it is through liberty that the individual achieves his own good and contributes, to the best of his ability, to the welfare and development of the state. The character of a state, whether despotic, democratic or totalitarian is indeed known from the

[1] Gettel, *Introduction to Political Science*, p. 110.

liberty that the individual enjoys in a state. Therefore far from being destructive of individual liberty sovereignty is the prop of liberty. An analysis of the concept of liberty will make this clear.

DIFFERENT MEANINGS OF LIBERTY. Liberty has different meanings when used in different contexts. The term natural liberty is often used to connote complete freedom of the human mind, or freedom of thought. It is also used to mean freedom from the conventions of the society, and desire to do just as one likes. It is supposed that nature has implanted certain instincts in man, and man should be free to pursue the urges that are instinctive. Natural liberty, in that sense, amounts to license. It is subversive of social and other forms of organization. Besides, life, property, and the pursuit of happiness, are regarded as the rights inherent in human nature, and therefore are natural rights. The concepts of natural law and natural rights went together. But now both have been discarded as imaginary and unscientific. As against this, the term civil liberty means the Rule of Law. The powers of government are defined by the constitution of the state, and the laws of the constitution guarantee certain freedoms to the individual. These freedoms are enjoyed by all alike. Thus civil liberty is a gift of the state to the citizen. Political liberty means that the people are free to determine how they are to be governed. It really signifies constitutional government, that is, a government, based on constitution which the people, in their free will, have created and adopted for themselves. Lastly, national liberty simply means national independence, that is, freedom from control exercised by one people over another. The term signifies a free country with sovereignty of the people established therein.

When we talk of liberty as a concept of political science in relation to the individual we mean civil liberty. The first thing that we have to remember in this connection is that the state is the only source of civil liberty. The state guarantees liberty to every individual by means of its sovereign power exercised through a system of laws. That is why it

has been aptly said that law is the condition of liberty. Liberty in order to be real, must be vigilantly guarded by law. It issues in the form of individual rights. They are the content of liberty. As Prof. Laski puts it: "liberty is the atmosphere created by rights". In order to maintain the atmosphere it is not enough that individual rights are created by the state. They have to be protected against the incursions of government and of other individuals or associations of individuals. In every state there are two types of law, viz., Public law and Private law. Public law guarantees the individual liberty against all interferences of government. Private law guarantees individual liberty against the interferences of other individuals or associations of individuals.

LIBERTY IS THE PRODUCT OF RIGHTS. Liberty, as we have observed, is an atmosphere created by rights. Liberty therefore consists in the maintenance of a system of rights. Rights are regarded as inviolate, and fundamental to the state. Without a system of rights the individual will lose his freedom, and cannot develop his personality. In a democracy the citizen must have certain opportunities and conditions assured to him to develop his personality fully. It is only then that he can best contribute to the common good which is the end of the state. In other words, an individual can be useful to the state, if he enjoys the rights fully. He will be a citizen in the real sense of the word. Rights are therefore related to certain ends. They are essential for developing the personality of the individual. They are necessary to the individual so that he may be useful to the state, to enrich the life of the political community of which he is a member, and contribute to the common well-being of the community. Rights are not privileges and opportunities, to be claimed for their own sake, or enjoyed in vacuum. They are meant to serve some fundamental purposes of the state. And they are enjoyed in a community every member of which has similar claims and privileges. Therefore an individual can enjoy his rights if he respects the rights of others. Further, he must be capable of serving not merely his own good but also the common good of the political com-

munity of which he is a member. He must, that is to say, actively aid in the promotion of the common well-being while he pursues his own good. According to Prof. Laski rights are correlative with functions. "I have them that I may make my contribution to the social end. I have no right to act unsocially. I have no claim to receive without the attempt, at least, to pay for what I receive. Function is thus implicit in right. In return for the conditions with which I am provided, I seek to make possible a contribution that enriches the common stock. And that contribution must be personal or it is no contribution at all. I do not contribute being the child of my parents. I do not contribute by withdrawal from my fellow-men . . . I may pay my debt to the state by being a brick-layer, or an artist, or a mathematician. Whatever form my payment takes, it is essential that I should realize that the rights I have, are given to me because I am performing some given duties. He, that will not perform functions, cannot enjoy rights any more than he, who will not work, ought to enjoy bread."

SOCIAL PURPOSE OF RIGHTS. Rights thus are opportunities to pay back our debt to the state, to contribute to the common well-being of the society. Rights are, therefore, not independent of society. They are inherent in it. We have them for its protection as well as our own. "To protect me against attack from others is to imply that I myself will desist from attacking others. To give me the benefit of education is to imply that I will so use the advantages education confers, as to add to the common stock. I do not exist solely for the state; but neither does the state exist solely for me. My claim comes from the fact that I share with others in the pursuit of a common end." And that end is invariably the well-being of the state.

NATURE OF RIGHTS. In modern democratic countries there is a tendency to regard rights as fundamental. The Indian constitution contains a chapter on fundamental rights. In the constitution of the U.S.A., they are known as the rights

of man. Great Britain has nothing like a system of rights incorporated in a constitution. Rights vary according to the character of the state, and in relation to the time. Right to property may mean in one state that a person is free to acquire wealth in the manner best suited to his abilities and bestow his possessions as he likes. In another state the methods of acquiring property may be strictly controlled, the limits may be imposed on personal property, and the process of transfer may be restricted. Again certain rights that are regarded as essential today did not exist a hundred years back. Right to education, or right to form associations like labour unions was denied by some of the states in the early years of this century. Today it is almost a universal feature of all progressive states. With changing conditions of life new claims emerge, and call for acceptance by the state. Sometimes when they are either suppressed or their acceptance is delayed, they lead to revolution, as in England in the 17th century and in France in the 18th century. Therefore there can be, at no time a rigid and immutable system of rights. Claims arise and seek recognition. The state at any given time is set in a situation, in which there are claims that are recognised and claims emerging that demand recognition. The state, in other words, does not create but recognises rights. "Rights are, in fact, those conditions of social life without which no man can seek, in general, to be himself at his best.... Rights, therefore, are prior to the state in the sense that recognised or not, they are that from which its validity derives. They are historical in the sense that at some given period and place they are demanded by the character of its civilisation".[1]

RIGHTS MAINTAINED BY MODERN STATES. Rights must be regarded from three aspects. They are the opportunities essential for the development of individual personality. They offer the necessary conditions which enable the individual to contribute his best to the common well-being of the state. Lastly, they are the product of the time and environment,

[1] Laski—*Grammar of Politics* p. 91.

and thus historical in character. A list of rights, which are generally enjoyed by citizens in the civilized states of the world would therefore comprise the following:

(i) Right to Life
(ii) Right to Property
(iii) Right of Association
(iv) Right of Expression
(v) Right of Worship and Conscience
(vi) Right of Franchise
(vii) Right to Education

RIGHT TO LIFE. Right to life is one of the fundamental rights. All rights depend upon life, and every individual must have the right to live in order to be significant in society. He must be protected from aggression of others. The state provides for the safety of the individual. The police and law courts are organised for this purpose. He has also the right to use force in self-defence, provided it is justified in a court of law. By using force in self-defence one may kill another. Therefore the law courts are competent to decide whether the amount of force exercised for self-defence is justified or not. But murder or culpable homicide, and suicide are punished from a different consideration. No individual has the right to take the life of another, and even that of his own. Generally a murderer is hanged, that is, deprived of his life by the verdict of law. Modern tendency is to abolish capital punishment, and give an opportunity to the individual to reform, so that he may ultimately resume his place in society and be a dutiful citizen. Similarly all attempts at suicide are punished by law. From the stand-point of common well-being every life is valuable. Therefore whether one kills others or oneself it means, that the society is deprived of the valuable contribution of an individual. It is a crime against the society, and therefore punished. But the right to life is not absolute. Sacrifice of individual life is often demanded on a large scale by the state in times of war. That is justified from a different consideration. It is necessary for the protection of the liberty and heritage of the community. Wars have certain social and political ends to serve. That is why conscription or compulsory enrolment in the army is ordered by the state.

RIGHT TO LIBERTY. Right to life involves right to liberty also. No individual should be restrained in his movements, or arrested by an order of the state without due cause shown in a law court. A man may have committed a theft, violence or any other offence, and may be arrested, and thus deprived of his liberty. But that is not lawful unless it is proved in a law court that he is guilty of the offence. In England individual liberty is safeguarded by the Habeas Corpus Act. If a person is arrested by the Police, he has to be produced before a law court, and cause has to be shown why he should not be set at liberty. This prevents the executive government from acting in an arbitrary manner, and protects individual liberty.

RIGHT TO PROPERTY. The right to property is regarded fundamental to the society and the individual alike. Man seeks self-preservation and freedom from wants. And to the extent that he is rendered free from wants he is enabled to fulfil his obligations to the state and society. For, if he suffers from privations he cannot develop his personality, and thus is incapable of contributing his best to the common good. He acquires wealth to satisfy these ends. Through ages this acquisitive tendency has grown and man has built up the institution of private property. The state and society have combined to uphold the institution everywhere. Consequently, the property of the individual, whether it is in the form of money, gold, land, house or any other thing, is guaranteed to him by the state. The state seeks to safeguard his possessions through law, and that is justified from several considerations.

Psychologically the right to property is an incentive to work. Men work to acquire wealth. They produce utilities,—goods and services,—and the wealth is the reward for their creative activities. If the builder of a railway, the inventor of a safety razor, the manufacturer of a patent medicine or organizer of an industry earns a fortune, it is the return for his individual effort and talent.

Further, property is the nurse of certain virtues essential to society. One can generously give for public causes, promote

cultural and intellectual undertakings, help in the relief of the sick and the poor, or cater to the comforts and cultural needs of his family. All these have a great significance in society. Economic and industrial development has been in a great measure, the result of private enterprise. The work of Rothschilds, Rockefellers, Henry Fords and others supply inspiring examples in this respect.

But in recent years the right of property or private ownership of property, has led to enormous accumulation of wealth in the hands of a few, and to the poverty of the masses in society. That has resulted in the exploitation of the latter by the former. That has given rise to what is known as capitalism. From the standpoint of moral justification capitalism and hereditary wealth have been questioned. It has been maintained that "there is a moral legitimacy in the modern distinction between owning and earning. Those whose property is the result of other men's efforts are parasitic upon society. They enjoy what they have not assisted to produce. . . . It is possible to admire the architect of a great fortune; it is not possible to admire those who live by his achievement."[1] Capitalism has been challenged on the ground that it claims a preponderating share of profits from all productive enterprise. Labour as a factor in production is treated with scant consideration. Consequently the modern tendency is to regulate through state action the acquisition and transfer of property, in a manner that would prevent the impoverishment of the masses and the accumulation of wealth in the hands of the few. Imposition of heavy taxes on big incomes and hereditary wealth, and abolition of private property in land, mines etc. are some of the measures adopted by the state to equalise possessions. With these limitations, right to property is guaranteed by the state.

RIGHT OF ASSOCIATION. Right of association is essential for man, because he lives in society. In society he enters into relationships with others. He becomes a member of

[1] Laski—*Grammar of Politics*, pp. 184-5.

unions, societies, groups and clubs for political, religious, ethical, recreational, philanthropic, commercial and such other purposes. Social life depends upon the establishment of contacts in numerous ways with one's own fellow-beings. Sometimes these contacts are confined to the frontiers of states, sometimes they extend beyond the frontiers. The Roman Catholic Church, the Freemasonry, the Rotary and such other associations have members spread over the states of the world. Man seeks the fulfilment of his nature and attainment of his ideal through associated and organized efforts. He has therefore to claim freedom to do so, and the state has to guarantee opportunities in this regard.

But that is not to say, that the individual will have the right of association to the detriment of the interests of the state. Catholics of India may fraternise with the Catholics of the United States for the pursuit of religious ends, but they cannot be allowed to do so, if their activities conflict with their loyalty to India. Within this limitation the right of association is guaranteed to the individual.

Right of association also implies freedom to choose one's companion in life—husband or wife. That is instinctive in man. Human existence and social life will not be possible without family, and family is formed when man and wife live together in wedlock. There must be however freedom of choice for the man and the woman alike. Restrictions may be imposed, only on the basis of morality and religion. One cannot marry one's deceased wife's sister in England or one's paternal uncle's daughter in India. In certain states polyandry and polygamy are forbidden. With these reservations the right to choose one's partner in life is upheld by all civilized states. But freedom of union has inherent in it the freedom of separation; and if the state guarantees the one, it must guarantee the other also. Family life involves also certain obligations, that is, of the parents towards the children and of the children towards their parents. The state seeks to enforce these as well.

Right of Expression. Right of expression refers

particularly to the freedom of speech and freedom of the press. Speech is one of the greatest gifts of God bestowed on man. He gives expression to his feelings, thoughts, and aspirations through speech. Man living in society and in various relationship with his fellow-beings must be free to speak out in private and in public what he thinks and feels, and also publish what he has to say about men and matters that concern him. He may be critical of the ways of the society and government. His ideas and opinions may be radical and unpleasant. But he must be allowed to express them freely; for, that is one of the civilized ways by which a citizen can serve the public good. He is entitled to address public gatherings, and write in the public press to focus the attention of his fellow-beings on matters that concern himself and others. This is one of the elemental rights of man, and its denial by any state deprives the community of one of the most potent means of progress and public good.

But this freedom like other freedoms is not absolute. Speeches and writings that are libellous are not only not permitted, but are punishable by law. Similarly discussions on religious and moral questions are not permitted if they are blasphemous. The freedom of the press is limited, like the freedom of speech, generally in times of war and other national crises. Apart from these considerations the right of expression is guaranteed by all the modern states to their citizens.

RIGHT OF WORSHIP AND CONSCIENCE. The right of worship and conscience means that a citizen should have the freedom to follow his own religion, and act according to the dictates of his own conscience. But in certain states there are state religions and state churches. A citizen has to conform to them. If he does not, he may be compelled to conform, or may be deprived of his rights. But the modern states do not generally resort to compulsion in this matter. They extend toleration to all their citizens in matters of faith. Thus in the United Kingdom though there is a state church, dissenting churches are allowed to follow their faiths freely. At one time in England the Catholics suffered from certain

disabilities, which in the 19th century were removed. Very recently Pakistan has set up an Islamic Republic, and imposed political disabilities on non-Muslims, inasmuch as they cannot be head of the State.

Freedom of conscience touches the deeper regions of human nature. A man has his own notions of what is right and wrong from a purely ethical point of view, and he must be free to act accordingly. For example, a man may regard that all wars are wrong, and he may, therefore, resist the state when it embarks on a war. In a situation like this the state cannot make his conscience say that, which it thinks wrong, is right. Though the state cannot do that, nevertheless it can imprison him or force him not to act in a certain way. No man can be allowed to stand outside the law on the ground that it conflicts with his conscience; neither can the state compel him to believe that, which he thinks is bad, is good. But the state can control his outward actions. Ultimately however the state and not the individual must be the judge of the right of conscience.

RIGHT OF FRANCHISE. The Right of franchise is a basic right in democracy. A democratic government is founded on the will of the people, and is run by the representatives of the people. People choose their representatives, and these exercise sovereign authority on behalf of the people. It stands to reason, therefore, that every adult citizen must have the right to indicate what persons, he desires, should undertake the task of government. "Neither sex nor property, neither race nor creed, ought to prevent the citizen from aiding in the choice of his rulers. If it be argued that his choice is often wrong, the answer is that democracy lives by the method of trial and error. If it be said that he rarely has the knowledge necessary to give a reasoned choice, the answer is the state must then organize on his behalf access to that knowledge."[1] Therefore for democracy to be real every adult citizen, provided he or she is not otherwise disqualified, should

[1] *Grammar of Politics*—Laski p. 115.

have the right of franchise.

But the right to choose one's representatives, involves the right to be chosen as well. And just as those who choose cannot be drawn from any special class in the community, so also those who are chosen cannot belong to any special section. "No class can ever successfully give the law to another class; no class indeed is ever good enough to legislate for another class".[1] Therefore all adult citizens, not otherwise disqualified, should be eligible to stand for election to any office in a democratic government.

RIGHT OF EDUCATION. The right to education in a democratic set-up is essential for every citizen. If he is called upon to choose his rulers, and actively assist in the government of his country he must have sufficient understanding of what is expected of him. He must be able to take his own decision and form his own opinion in regard to the matters that concern him. He must be able to follow the process of politics, the public press, and the utterances of public men. It is necessary for him to understand his own needs and the needs of his community. He must be able to give an intelligible expression to these needs and join his fellowmen in getting them satisfied. Citizenship, therefore, consists in "the contribution of one's instructed judgment to the public good". This is possible only when the citizen has some amount of education. How much education, he should have is a matter for each community to decide. Certain states provide free and compulsory education up to the age of fourteen. Even that much is of great advantage to him. He must, at any rate, have some training of the mind and intellect, at the cost of the state, in order that he may be able to play his part as a member of the state. Otherwise he becomes mentally a slave of others. He follows like dumb driven cattle the ideas of others. For, in the long run, it is everywhere seen that power belongs to those who can formulate and grasp ideas. He must therefore be educated to understand that this is a world in which he

[1] *Grammar of Politics*—Laski p. 116.

can determine his destiny by the use of his mind and will. That is why everyone must have a right to education.

MAINTENANCE OF RIGHTS. These are some of the outstanding rights that citizenship implies. They should be assured to the citizen without discrimination. Caste, creed, sex and worldly possessions should be no considerations in this matter. But apart from the rights discussed so far, there are others like the right to work, right to reasonable hours of labour, right to adequate wages, etc., which states with particular ideologies seek to maintain. But one thing that must be universally accepted in the maintenance of rights is that a mere enunciation or incorporation in a state document is not enough guarantee that the citizen shall have them. The government must be vigilant, and the citizens themselves alert about it. Government must act quickly if there is encroachment on the rights of an individual by another. The citizens must readily protest if the government infringes their rights. There must also be sources of redress easily accessible to the citizen for this purpose. That is why it has been rightly said that eternal vigilance is the price of liberty, and as Pericles said in one of his great funeral orations "the secret of liberty is courage".

LIBERTY MEANINGLESS WITHOUT EQUALITY. But liberty is meaningless without equality. Equality implies a certain levelling process, a process in which every citizen finds himself in the same level in respect of the opportunities guaranteed to him for developing his personality. Not that his level is determined by the state once for all, and he cannot rise above that. The opportunities may help him rise above his fellows and he may reach heights which few others can reach. That depends upon his special talent and nature of efforts. He cannot, however, claim special opportunities because he is talented; nor should adequate opportunities be denied to one because he is not talented. Men are different in want, capacity, and habit. Equality does not mean identity of treatment. It means firstly that opportunities in an adequate

measure are uniformly assured to all, and secondly that special privilege or preferential treatment in respect of opportunities cannot be given to any. If liberty is the atmosphere created by rights, and rights are those conditions of social life without which no man can seek, in general to be himself at his best, then liberty is inconceivable except in terms of equality. But very often equality expressed in the shape of equal political rights leaves out of account economic rights altogether. The system of universal suffrage gives power to choose one's representative equally to all citizens, but that power becomes ineffective in the absence of economic equality. If, therefore, we build democracy upon political equality, political equality becomes a mockery without economic equality. "Political power otherwise is turned to be the handmaid of economic power."

Chapter VI

L A W

MEANINGS OF LAW. Law, in ordinary usage, has more than one meaning. It is used to mean the sequence of cause and effect in the phenomena of nature, and the law of gravitation and the law of planetary motion are the examples. Law has reference to human conduct also. In that context it means a rule for the guidance of human conduct. When it has a bearing on the motives and the will of man influencing his conduct it is called a moral or ethical law. When it refers to the social or political conduct of man in the shape of an external act it is called a social or political law. This is generally known as positive law, and forms a subject matter of political science.

DEFINITION OF LAW. In political science law is regarded as a command issued by the state, and enforced by its authority over the citizens. It commands the citizens what they should do, and what they should not. Transgression of the command is followed by a penalty. John Austin defined law as a command of the sovereign. But Henry Maine criticised the view by pointing out that the most despotic sovereign will not issue a command that would violate the established customs and usage of a community. His law therefore will not be merely his command, or an act of his sovereign will, but an act in consonance with the customs or usage of the community. The element of compulsion in the law would thus arise from the established habit and thought of the community, rather than from the arbitrary will of the sovereign. Therefore Woodrow Wilson gave a more logical definition of law when he said that "law is that portion of the established thought and habit which has gained distinct and

formal recognition in the shape of uniform rules backed by the authority and power of government". That brings out the nature of the law. It is based on the established thought and habit of the people. It takes the shape of uniform rules. And those rules are enforced by the authority and power of government. Further a law is, as Prof. Holland said "a general rule of external human action enforced by a sovereign political authority". Law therefore refers to external human action only.

SCOPE OF LAW. But there is one other aspect of the law, which is not brought out by the above definition. In a state man comes into contact not only with his fellow-men, but with government also. Just as a man's conduct towards other men is regulated by law, similarly the conduct of government towards the citizen is regulated by the constitution. It should form a part of the law also. Hence the most comprehensive definition of the law is what Woodrow Wilson gives. "Law is the will of the state concerning its own organization and conduct, and the civic conduct of those who are under its authority". Thus law has three aspects. Firstly it pertains to the organization of the state, that is, government and its functions; secondly, to the citizen in his relations with the government; and thirdly to the relations of the citizen with other citizens. Law therefore has got two broad divisions, viz., Public law and Private law. "Public law is that which immediately concerns the existence, the structure, the functions and the methods of the state. Taken in its full scope, it includes not only what we familiarly know as the constitutional law, but also what is known as the administrative law, as well as all civil procedure in the courts and all criminal law. Private law on the other hand is that portion of positive law which secures to the citizen his rights against the other citizens of the state. It seeks to effect justice between individual and individual; its sphere is the sphere of individual right and duty".[1]

[1] Wilson—*The State* p. 89.

CONDITIONS ESSENTIAL FOR LAW. There are two conditions essential for the existence of law. Firstly there must be a community capable of having a will of its own. That is to say, a community must not be subject to the will of another community. Secondly, there must be "some clearly recognised body of rules to which that community has, whether by custom or enactment, given life, character and effectiveness." In other words law must be a body of well recognised and uniform rules, which must have the unstinted force of the community behind it. It must spring from the community, reflect its life and character, and have the power of the community to be effective.

SOURCES OF LAW: (I) CUSTOM. The sources of law are the custom, religion, adjudication, equity, scientific discussion and legislation. Custom and religion are the earliest sources of law. It is difficult to trace how customs are formed. They begin in the dim ages of the past, of which people have no memory, and are rooted in the practices and habits of the community. When a certain practice or way of doing things which has a social import becomes widely prevalent in the community, it is regarded as a custom. It derives force from the co-operative action of the community, and not from the commands of a king or law-giver. It is customary for example that the sons and not daughters share the property of the father. It is customary in southern India to marry one's maternal uncle's daughter, but it is taboo in northern India.

(II) RELIGION. Like custom, religion has been the earliest nursery of law. Very often, custom and religion overlap and cannot be distinguished or separated. Ancient man had a mysterious fear for the supernatural, and that was the basis of his religion. Religion ruled his life. His actions were guided and controlled by the dictates of religion. In the earlier period of human civilization there was little difference between the functions of the priest and the functions of the king. What was religious became binding for the state to enforce, and for the community to follow. Early law codes of

the Hindus contained a body of rules based on religion. Some of our law codes like Baudhāyana, Āpastamba, Goutama, Vasistha and Manu are more religious than secular. For example not to marry outside one's caste is an injunction of religion, and that is also a law for the community.

(III) ADJUDICATION. Adjudication is the decision of the judge. The judge interprets and applies enacted laws in giving justice to the people. He also bases his decisions on prevalent customs and usage where the enacted law gives no guidance. By his interpretation, application, and adoption of the enacted laws or prevalent custom for purposes of justice, a new category of law takes shape. The decisions of our high courts, for example, are often quoted as precedents, and taken for guidance. They thus help in the expansion of the existing laws.

(IV) EQUITY. Equity is also judge-made law. It is, however, made not in the interpretation of, but in addition to, the existing laws. "The most conspicuous types of such law are the decisions of the Roman Praeter and those of the English Chancellor. These decisions were meant to give relief where existing law afforded none." These decisions were based on commonsense or a sense of fair play. It sometimes so happens that the existing laws do not cover a particular case, or are likely to defeat the ends of justice if applied to a particular case. In such circumstances the judge uses his discretion in a manner that would satisfy the ends of justice. By doing so, he creates a precedent which, if sound, becomes the basis of a new law. According to Henry Maine equity is "any body of rules existing by the side of the original civil law, founded on distinct principles and claiming incidentally to supersede the civil law in virtue of a superior sanctity inherent in those principles".

(V) SCIENTIFIC DISCUSSION. Scientific discussion or commentary is an important source of law. That is the work of the jurists. They study the existing laws and come to certain conclusions in respect of their interpretation, application

and objective. In the light of these conclusions, the laws are sometimes modified. The opinions of the great jurists like Yajnavalkya the author of the Mitakshara in India, and Blackstone in England have a great significance in the interpretation and application of the law of the two countries. The authority of the commentators is established just like a judge-made decision by repeated acceptance in the courts of law. Besides, the jurists or legal commentators by collecting, comparing and discussing the principles of law, customs, and judicial decisions, lay down the basis for new law.

(VI) LEGISLATION. Legislation in modern states is the most outstanding and prolific source of law. That is the only authoritative source of law today. It has superseded all other sources and processes of law making. The reason is that sovereign communities now want their representatives to make laws for them. And laws now embody the sovereign will of the community. Hence as Wilson said: "Custom of the older sort . . . has been in large part superseded by acts of legislation; Religion stands apart giving law only to the conscience; Adjudication is being more and more restricted by codification; Equity is being merged in the main body of the Law by enactment; Scientific Discussion now does hardly more than collate cases; all means of formulating Law tend to be swallowed up in the one great, deep and broadening source, Legislation."

These are the sources of law. But in the last analysis law arises from the will of the people, from their habits, from their preferences and prejudices. It "is the creation not of individuals, but of the special needs, the special opportunities, the special perils or misfortunes of communities. No law-maker may force upon a people Law which has not, in some sense, been suggested to him by the circumstances or opinions of the nation for whom he acts. Rulers, in all states alike, exercise the power of the community, but cannot exercise any other."

LAW INVOLVES AN OUGHT AND A MUST. Law operates in the form of compulsion. This compulsion has two

aspects, ethical and physical. It is an ethical compulsion to the extent that it is accepted as just, and carries conviction by the moral end that it seeks to serve. It is a physical compulsion for those who do not see its moral end and do not yield to its appeal. In other words it involves an ought and a must. One obeys the law because he feels he ought to obey it. If he does not feel that way, force is exercised to compel obedience. The power of the state comes in there. Or the giant will of the people, expressed through the organs of the state and constituted as an absolute power, plays its part. But essentially law has a moral appeal, and it is this appeal which is the sole justification of law.

LAW AND ETHICS. But that is not to suggest that law must necessarily embody moral ideas or conform to the ethical standards of a community. Law and Ethics refer to different areas of life. "Ethics concerns the whole walk and conversation of the individual; it touches the rectitude of each man's life, the truth of his dealings with his own conscience, the whole substance of character and conduct, righteousness both of act and of mental habit. Law, on the other hand, concerns only man's life in society. It not only confines itself to controlling the outward acts of men; it limits itself to those particular acts of man to man, which can be regulated by the public authority, which it has proved practicable to regluate in accordance with uniform rules applicable to all alike and in an equal degree."[1] For example, law does not try to punish untruthfulness, as such. It only rejects contracts obtained by fraud and misrepresentation, and awards damages for it. It does not become the guardian of a man's character. It only punishes those who give proof of bad character in their dealings with their fellow men. Further, law forbids certain acts which become wrong and punishable by law because they are forbidden. For example there is nothing wrong in giving alms to the poor, but English law forbids it, and it is punishable by the law of England.

[1] Wilson—*The State* p. 83.

Nevertheless, there is a close connection between law and Ethics. They arise from the same source, viz., the habit and experience of man in society. In the primitive social life they were not separate. When the State and Church were separated, law was distinguished from moral precepts; the former having the State as its source and the latter the Church. But ethical ideas and standards always influence the formulation of law. Ideas of right and wrong widely held by the community always tend to be crystallised into law. On the other hand laws that attempt to force new moral ideas, or laws that are no longer in tune with accepted ethical standards are difficult to enforce, and become obsolete. Law of temperance in the United States is a case in point. Only such law as has the support of moral sentiment of the people is respected and obeyed.

DIFFERENT KINDS OF LAW: (I) CONSTITUTIONAL LAW. There are various kinds of law according to the agency through which they are formulated. Constitutional Law concerns the organization and function of the government. It may be written or unwritten. A written constitution is made by a special body appointed for the purpose, and the constitutions of India and the United States are examples. An unwritten constitution is a body of principles which grows up gradually. It is based on the customs of the people, and is made by the ordinary law-making agency of the state. The constitution of the United Kingdom is the only example of it. Constitutional law prescribes the procedure of government, and lays down the limits within which the powers of government are exercised.

(II) STATUTE LAW. Statute law is ordinary law made by the legislatures of the states. It refers to the relations and interests of the citizens in their day-to-day life. It includes criminal law and civil law. "That branch of law, which defines the acts that infringe the rights of the state, and provides penal consequences, is called criminal law." Criminal law pertains to acts both against the state and against individuals,

which indirectly affect the general welfare. Murder or theft is punished by criminal law, because it is an offence against the state. Civil law concerns only the private individuals, while the state acts as the arbiter. It seeks to secure to each citizen his rights against other citizens, and comprises the law of contracts, of property, of torts, of inheritance etc.

(III) ORDINANCES. Ordinances are issued by the executive branch of government within constitutional limits. They are meant to serve some special purpose of administrative convenience or emergency, and have a temporary duration. The method, duration, and purpose of ordinances are always prescribed by the constitution.

(IV) COMMON LAW. There is a class of law, particularly in England, known as the Common Law. It is derived from custom and established precedents. The Common Law is unwritten law, and in the main, retains that character. Nevertheless its sources are largely in print. The most important of them are these: The decisions of the judges of the English courts, which as early as the 16th century acquired weight as precedents, and are now-a-days practically decisive in analogous cases, come in the first category. In the second category came the decisions of the courts of other countries in which a law derived from the English Law is administered. Such decisions, of course, are not binding, but are highly influential. In the third and last category come certain "books of authority" written by the learned lawyers of earlier times. The Common Law is enforced by the courts of law like the statute law.

(V) ADMINISTRATIVE LAW. The Administrative Law is peculiar to the continent of Europe. It is applicable to public officers as distinguished from private individuals. It is "that part of the public law which fixes the organization and determines the competence of the administrative authorities, and indicates to the individual, remedies for the violation of

his rights."[1] The officers of government, acting in their official capacity, cannot be tried by the ordinary courts of law, nor can the ordinary laws be applicable to them. For such purposes the Administrative Courts applying Administrative Law are provided. This procedure affords protection to the administrative officials acting in their official capacity and strengthens the hands of the executive. In justification it is pointed out that if this special procedure is not adopted a soldier is likely to be court-martialled and shot for disobeying the orders of his officer to shoot down people, and to be hanged for obeying him.

(VI) INTERNATIONAL LAW. The International Law comprises a body of rules which governs the conduct of the states of the world in their dealings with one another. It is derived from the treaties and engagements between states, international conferences and arbitration tribunals, diplomatic agreement and understanding, the municipal law of states, and such other sources. International Law falls into three divisions, viz., the Law governing states in their normal peaceful relations, the Law governing the states in war and the Law governing states in neutrality.

It is often questioned whether International Law can be regarded as law at all. If the fundamental fact about law be that it is a command given and enforced by a determinate authority then International Law cannot be regarded properly as law. In spite of the United Nations Organization there is no power than can enforce it; in spite of the International Court of Justice there is no authority whose interpretation of the law can be accepted as final. The reason is that since sovereignty claimed by every state means its absolute authority over all individuals within the state, and absolute independence from all authority outside the state, it necessarily follows that two or more states cannot be bound by any authority but their own. To make it properly law, there should be a common authortiy which can enforce it and command obedience to it, but that would destroy the sovereignty of the state.

[1] Goodrow—*Comparative Administrative Law*, Vol. I, p. 8.

Chapter VII

THE FORM OF THE STATE

NUMEROUS FORMS OF THE STATE AND THE BASIS OF THEIR CLASSIFICATION. There are numerous states in the world. Scientifically speaking they are not so many different states as they are different forms of the state. The state is a universal idea. It manifests itself in so many forms. The forms of the state vary widely from each other even though they all have the same constituent elements of population, territory, sovereignty and government. A study of the state therefore has to attempt a classification of these forms. For this purpose a basis has to be determined. Population or territory cannot be regarded as a satisfactory basis. They express only the physical features of the state. On that basis states can be divided into categories of number of square miles or population which conveys no material difference. On the basis of sovereignty no classification is possible because all states are alike in the matter of unity or sovereignty. As Professor Gettel puts it: "classification of states on the basis of territory and population is mere description; classification on the basis of unity is impossible." The only basis that can be adopted is how the state is organized, that is, the structure of government. For, the sovereign will and power of the state find expression only through government. The structure of government alone indicates how the sovereign power is exercised and the sovereign will of the people is carried out. That offers a proper basis for the classification, because any variation in that will show a material difference between the forms of the state.

ARISTOTELIAN CLASSIFICATION. The classic example of classification is that given by Aristotle in his book

Politics. He based his classification on (a) the number of persons who held the supreme power and (b) the purpose for which they used the power. If the power was held by one person it was monarchy, if by a few it was aristocracy, and if by many it was polity, provided those who held the power utilized it for the benefit of the people. If, however, they utilized it for their own benefit then monarchy degenerated into tyranny, aristocracy into oligarchy, and polity into democracy, which according to Aristotle was mob-rule. Aristotle regarded monarchy, aristocracy, and polity as normal forms of government, and tyranny, oligarchy, and democracy, as their perverted forms.

Aristotle in offering this classification wanted also to suggest the natural evolution of government. According to him "the first governments were kingships; probably for this reason, because, of old, when cities were small, men of eminent virtues were few. They were made kings because they were benefactors, and benefits can only be bestowed by good men. But when persons equal in merit arose, no longer enduring the pre-eminence of one, they desired to have a commonwealth, and set up a constitution. The ruling class soon deteriorated and enriched themselves out of the public treasury; riches became the part of honour, and so oligarchies naturally grew up. These passed into tyrannies, and tyrannies into democracies; for, love of gain in the ruling classes was always tending to diminish their number, and so to strengthen the masses, who in the end set upon their masters and established democracies."[1] The Aristotelian cycle of evolution reflected the political changes that took place in the Greek city states. It also applies in a general way to the political changes that have occurred in the modern period of European history. But the classification of Aristotle is hardly applicable to the modern states. Aristotle's monarchy, for example, would not apply to Great Britain because though a monarch is the head of the state, the real power is held by the people. Neither would polity, corresponding to democracy in the modern sense, be

[1] Aristotle—*Politics*, II, Ch. XV.

applicable. There is no category in the Aristotelian classification for limited or constitutional monarchy. Further, it fails to take account of the federal and unitary forms of government. Nor does it draw any distinction between governments according to the differences of the constitutional relations between the legislature and the executive. Where the executive is responsible to the legislature it is called the parliamentary, and where the executive is not responsible to the legislature it is called the non-parliamentary form of government. There is no provision for this distinction in the Aristotelian classification. Applied to modern conditions therefore it is inadequate.

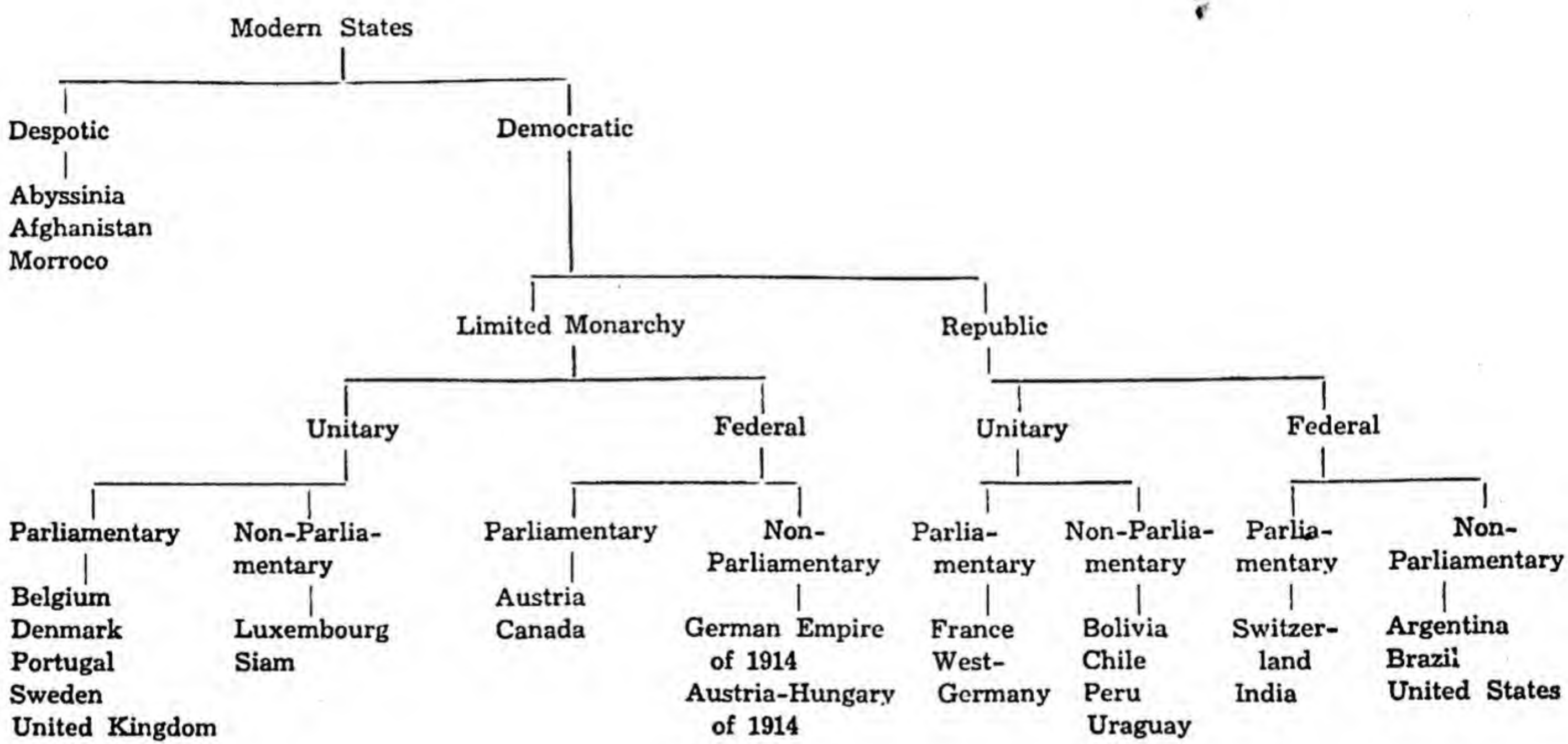
OTHER CLASSIFICATIONS. Classifications have been attempted by later writers also. Montesquieu, an eminent French writer and author of *Esprit des Lois* (1748), proposed that governments should be divided into three categories, viz., republican, monarchical, and despotic. According to him republican government was that "in which the people as a body, or even a part of the people, has sovereign power; monarchical, that in which a single person governs, but only by fixed and established laws; whereas in despotic government a single person without any law or rule, conducts everything according to his will and caprice." In this classification also there is no division of governments into federal and unitary, or into parliamentary and non-parliamentary forms. Rousseau classified governments into monarchies, aristocracies and democracies, subdividing aristocracies into natural, elective, and hereditary. Bluntschli added a fourth form to the list of governments, and called it theocracy in its normal form and idolocracy in its perverted form. Theocracy, according to him was one "in which no human authority has been recognized, in which the supreme power has been attributed either to God, or to a god, or to some other superhuman being, or to an Idea. The men who exercise rule are not regarded as its possessors, but as the servants and viceregents of an unseen ruler. Its perversion is idolocracy". The rule of the Pope in the middle ages in Europe is an example of this form of

government. Von Mohl, a German writer of the early 19th century divided governments into patriarchal, theocratic, despotic, classic, feudal and constitutional ones. These classifications are defective, because the categories overlap, and also do not apply to some of the modern governments.

One of the modern English writers—Sir J. A. R. Marriott, offers a classification, which is more adequate than any we have discussed so far. According to him modern governments can be divided into three broad categories, viz. (a) whether they are unitary or federal, (b) whether they have a rigid or flexible constitution, and (c) whether they are parliamentary, meaning responsible form of government, or non-parliamentary, that is, monarchical or presidential form of government. An example of unitary government is France, and of federal government is the United States of America. The United Kingdom has a flexible constitution, and both France and the U.S.A. have rigid constitutions. Parliamentary government obtains in the United Kingdom and France, because there, the executive is responsible to the legislature; whereas non-parliamentary or presidential form obtains in the U.S.A., because there the executive is not responsible to the legislature.

Professor Stephen Leacock offers a similar and more comprehensive classification. He divides the modern states into two broad categories, viz., despotic and democratic. Democratic states he subdivides into limited monarchy where the head of the state is a monarch, and republic where the head of the state is elected for a brief term. He again subdivides them into unitary, and federal, and these further into parliamentary and non-parliamentary. His classification is best explained by his own table given on page 84.

But even this classification is not exhaustive. In the years succeeding the first World War new forms of political organization came into existence in Europe. They were totalitarian or authoritarian in character, and anti-democratic in principle. The examples are the Fascist government in Italy, the Nazi government in Germany, and the Soviet government in Russia. Of these Italy was a monarchy, whereas Germany and Russia were Republics. All had single party governments not based

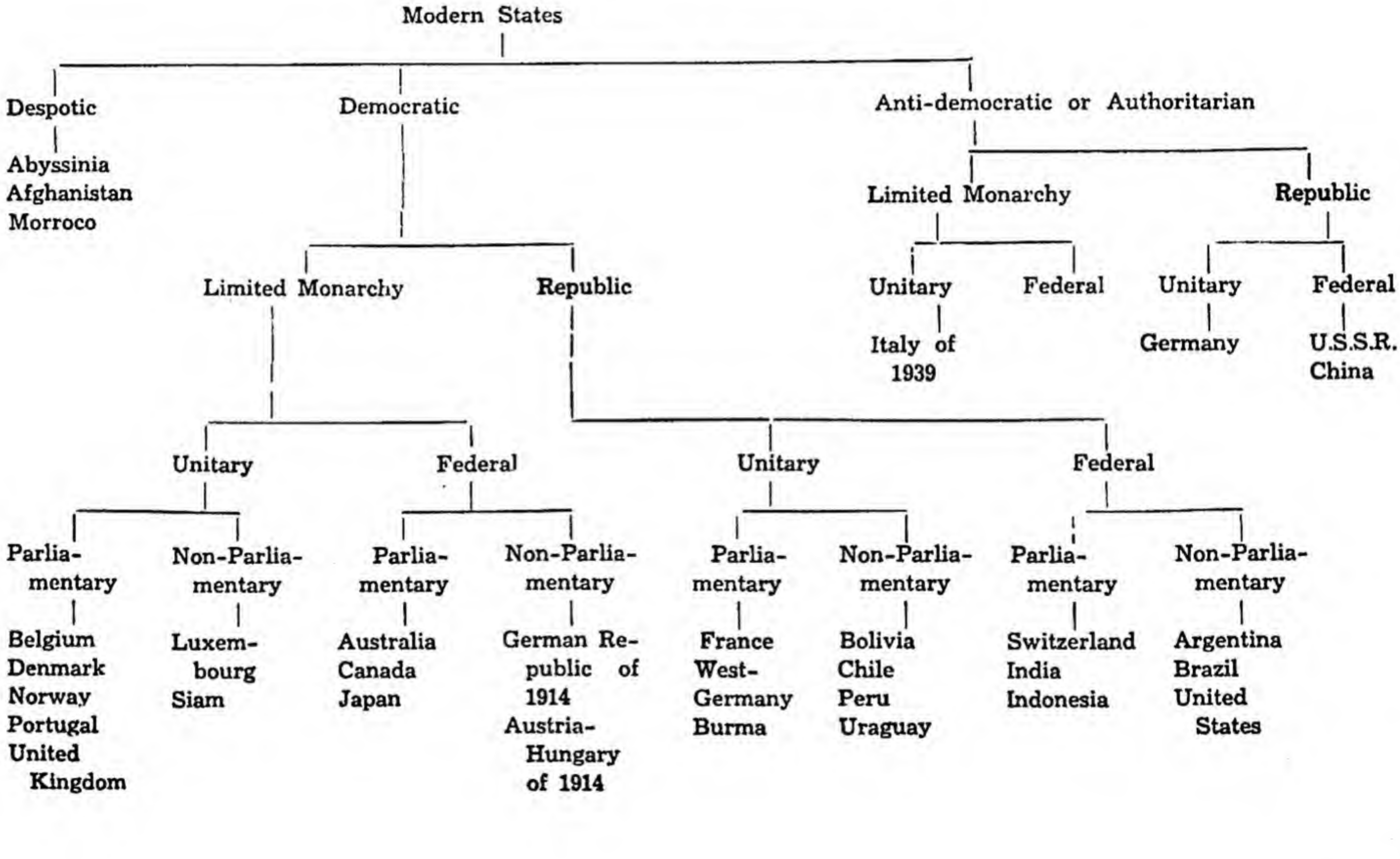

Modern States
Despotic
Abyssinia
Afghanistan
Morroco
Democratic
Limited Monarchy
Unitary
Parliamentary
Belgium
Denmark
Portugal
Sweden
United Kingdom
Non-Parliamentary
Luxembourg
Siam
Federal
Parliamentary
Austria
Canada
Non-Parliamentary
German Empire of 1914
Austria-Hungary of 1914
Republic
Unitary
Parliamentary
France
West-Germany
Non-Parliamentary
Bolivia
Chile
Peru
Uraguay
Federal
Parliamentary
Switzerland
India
Non-Parliamentary
Argentina
Brazil
United States

on executive responsibility in any form. The head of the state was like a dictator, who guided and controlled the entire life and activity of the community, and the individual was merged in the state. They were anti-democratic, because they did not believe in the freedom of the individual, and a system of inalienable rights. In order that Professor Leacock's classification can cover the states of Nazi Germany, Fascist Italy and Soviet Russia, we have to add a new category of anti-democratic form of government to his despotic and democratic forms as in the table on page 86.

Even so, the classification is not exhaustive. It leaves out of account, for example, the two forms of democratic government known as direct or pure democracy, and indirect or representative democracy. In ancient Greece the city state of Athens had direct democracy. Today there are within the Swiss Republic a few cantons where direct democracy obtains. Almost all other democracies of the world are indirect or representative democracies. One great advantage of the representative over the direct democracy is, that it "combines the principle of aristocracy, in the sense of the rule of those best qualified to rule, with that of democracy."[1]

DIFFERENT FORMS OF GOVERNMENT EXPLAINED: (A) DESPOTIC AND DEMOCRATIC. Here we may say a few words to bring out the significance of the forms of governments, which are classified above. In the modern world despotic governments are very few. They are gradually dying out. In countries where they exist even now, like Abyssinia and Afghanistan, the usual methods of rule are greatly modified by the impact of democratic ideas swirling around them. A despotic government is one in which the will of the ruler, who is a hereditary monarch or a conqueror prevails. There is nothing like constitutional limits to his power or constitutional ways of exercising that power. The exercise of authority is associated with the whims and caprices of one man. The idea that people are the ultimate repository

[1] Gilchrist—p. 245.


Modern States
Despotic
Abyssinia
Afghanistan
Morroco
Democratic
Limited Monarchy
Unitary
Parliamentary
Belgium
Denmark
Norway
Portugal
United Kingdom
Non-Parliamentary
Luxembourg
Siam
Federal
Parliamentary
Australia
Canada
Japan
Non-Parliamentary
German Republic of 1914
Austria-Hungary of 1914
Republic
Unitary
Parliamentary
France
West-Germany
Burma
Non-Parliamentary
Bolivia
Chile
Peru
Uraguay
Federal
Parliamentary
Switzerland
India
Indonesia
Non-Parliamentary
Argentina
Brazil
United States
Anti-democratic or Authoritarian
Limited Monarchy
Unitary
Italy of 1939
Federal
Republic
Unitary
Germany
Federal
U.S.S.R.
China

of power, and they are to be consulted in the exercise of power or associated with government, is conspicuous by its absence. The government is based on military strength; and force, not consent, is the hallmark of its character. To quote Prof. Gettell despotic government is that "in which a few persons have any share in political power, and in which the mass of the people take no part at any time in exercising or legally influencing governmental authority."

As opposed to this, democratic government is one "in which a large proportion of the population has active political rights, in which possession of suffrage and eligibility to office is widespread, and in which civic consciousness has extended over the mass of the people." It is based, as Delisle Burns puts it, on "a profound faith in the unknown excellences of the common man" or as Abraham Lincoln said "it is government of the people, for the people, and by the people." In a democratic government the people are the sole repository of power, and ultimate sovereign. The people are actively associated with government.

In the ancient Greek city states direct democracy was in practice. People assembled periodically to make the laws, decide the policy of the state, and vote money for the government. In the modern world direct democracy has practically disappeared owing to the size of the population that forms the state. There is indirect or representative democracy instead. Since everybody cannot attend the legislature, the people elect representatives by vote. These representatives attend the legislature and act on behalf of the people. If, however, the people are not satisfied with the work of their representatives they may throw them out in the next elections. Again in a democratic government "the governing body is a comparatively large fraction of the entire nation."[1] Or as Lord Bryce said "the ruling power of a state is largely vested, not in any particular class or classes, but in the members of the community as a whole. This means, in communities which act by voting, that rule belongs to the majority, as no other

[1] Dicey—*Law and Opinion in England*, pp. 50, 52.

method has been found for determining peaceably and legally what is to be declared the will of a community, which is not unanimous."[1] This definition of democratic government as rule by a majority of the people appears to be most satisfactory. There is no doubt that democracy is the best form of government. It is the government of the people as distinguished from the government of an individual which is called autocracy or of a class of people which is known as either aristocracy, or oligarchy. It enables all the citizens to have a voice in the legislation and control of the government. It creates a sense of responsibility in the citizen, and lends significance to his personality. Thereby it educates and elevates the citizen. In a democratic government there is little cause for revolution, because it is based on popular consent and people have always the option of changing a government by the easy means of voting it down. That is its supreme merit.

(B) CONSTITUTIONAL MONARCHY AND REPUBLIC. A democratic government may have as its head, a monarch whose office is hereditary, or an elected president for a term, defined by the constitution. If there is a monarch, it is known as constitutional or limited monarchy. The monarch, either a king or queen possesses only nominal powers. The real powers belong to ministers who actually exercise them and carry on the government. They enjoy the confidence of the popular legislature and are responsible to it. Owing to historical causes monarchy obtains in England. The monarch is allowed to rule in conformity with the popular will expressed through the British Parliament. He is not allowed to govern.

If, instead of a king, there is an elected president, as the head of a democratic government it is called a republic. The president is generally invested with actual but definite powers. The powers are defined by a constitution as in the United States of America and the Republic of India. In the United States the President has more powers than the Indian Presi-

1 Bryce—*Modern Democracies*, Vol. 1, p. 20.

dent. That is due to the difference in the set-up of the two governments.

(c) PARLIAMENTARY AND PRESIDENTIAL. The American government is a presidential or non-responsible type, whereas the Indian government is a Parliamentary or responsible type. Presidential or non-responsible government is one in which the executive is not responsible to the legislature, and a Parliamentary or responsible government is one in which the executive is responsible to the legislature. In the United States the President is the head of the executive and head of the state. He and his secretaries are not responsible to the legislature. In India the executive is responsible to the legislature. The President is the head of the state, and acts only on the advice of the ministers, who actually carry on the government and are responsible to the legislature. That is why the American President is invested with more real powers than the Indian President.

(d) UNITARY AND FEDERAL. All democratic governments whether parliamentary or non-parliamentary, constitutional monarchy or republic fall into two distinct categories, viz., Unitary and Federal. This distinction is made on the basis of the concentration and distribution of powers, as also on the relation between the central and local authorities. "Where the whole power of government is conferred by the constitution upon a single central organ or organs, from which the local governments derive whatever authority or autonomy they may possess, and indeed their very existence, we have a system of unitary government. It is characteristic of this form of government that there is no constitutional division or distribution of power between the central government of the state and the subordinate local governments. There is, in short, but one common source of authority, and but one will exerted."[1] The examples of this type are the United Kingdom, France, Italy etc. In contrast to the unitary government, a

[1] Garner—*Political Science and Government*, p. 346.

federal government is one in which the powers of government are not concentrated, but distributed according to the constitution between a central government, and the governments of territorial units, of which the federation is composed. The central government and the local governments are co-ordinate authorities, and the spheres of their autonomy are defined. The local governments, as in a unitary state, do not owe their existence to the laws of the central government, nor can their competence be restricted by the central government. "Federal government may, therefore, be defined as a system of central and local government combined under a common sovereignty, both the central and local organizations being supreme within definite spheres, marked out for them by the general constitution or by the act of parliament, which creates the system. It is dual government as distinguished from unitary government, and implies local self-government as opposed to centralized government."[1] The powers of government are distributed between the central government and local governments on the basis of what is of common interest to the nation and what is not. All matters of common concern which require uniformity of regulation are controlled by the central government, and all matters which are of local interest and admit of variety in their regulation are controlled by the local governments. The examples of this type are the U.S.A., India, U.S.S.R. etc.

(E) AUTHORITARIAN OR ANTI-DEMOCRATIC. So far we have dealt with governments that are democratic. After World War I some new types came into existence. They were the Soviet government in Russia, the Fascist government in Italy, and the Nazi government in Germany. They had little respect for the principles of democracy. Firstly, they believed in coercion and force rather than consent and persuasion on which democratic government is based. Secondly, they believed in single party government, and sought to liquidate all opposition parties by means of violence. In Italy and Germany they set up one-party rule. The entire

[1] Garner—*Political Science and Government*, p. 348.

community was coerced to join the party or conform to its programme. In Russia they propped up only one class viz., the workers or proletariat at the cost of all others, which they sought to wipe out. They set up a dictatorship of the proletariat. Thirdly, they assumed that the interest of the state and of the individual was one and the same. The individual must live for the state and merge himself in the state. Therefore there cannot be a system of inalienable individual rights. Fourthly, they stood for intensive centralization of power in the hands of the leader of the party. They sought to organize and control the entire life and activities of the people. In consequence they set up numerous corporations as in Italy, and called it a corporative or totalitarian state. The Nazis in Germany laid down the lines along which the people should work and live, and the slightest deviations were severely punished. In Russia private ownership was abolished. All property was taken over by the state, and a regime of planned economy directed and controlled by the state was established. Fifthly, they had a great faith in the will of the people. But the will of the people was to be aroused, trained, unified and guided to action. A series of social and economic programmes meant for the uplift of the masses created the necessary consciousness and loyalty for the party. But the mass of common men did not understand and therefore could not determine the policies of national welfare. Therefore guidance must be left to the leaders, and the masses must obey. Lastly, they laid emphasis on organization, unity, direct action, and efficiency. Democracy encouraged diffusion. It was slow, vacillating and inefficient. It emphasised debate and discussion rather than direct action. That is why in Soviet Russia, Fascist Italy, and Nazi Germany they set up governments which were known as authoritarian, or dictatorships. They were basically different from democracy. There was nothing like free vote, free election, and free expression of opinion. Every thing was regimented by means of coercion.

Constitutions. The form of a government is defined by its constitution. A constitution generally lays down what

powers the government of a state should have and how it should exercise them; what functions the government should have and how it should fulfil them; and what ends the state has in view and how they can be attained. That is why Aristotle wrote in his book, *Politics*, that "a constitution is the organization of offices in a state, and determines what is to be the governing body and what is the end of the community."[1] Prof. Woolsey defined a constitution as "the collection of principles according to which the powers of the government, the rights of the governed, and the relations between the two are adjusted." The eminent English jurist Prof. Dicey said that a constitution embodied all those rules "which directly or indirectly affect the distribution or exercise of the sovereign power in the state." In fact a constitution comprises all those rules and laws written or unwritten, which defines the organs of government, their powers and fuctions, and the ends for which the government is organized.

UNWRITTEN CONSTITUTION. Constitutions are generally of two kinds viz., written and unwritten, or rigid and flexible. A written constitution is one which has been definitely enacted in the form of a single legal instrument. An unwritten constitution generally comprises a number of customs and usage, some of which may be written and others unwritten, as well as statutes definitely enacted at different times. The main characteristic of an unwritten constitution is that it is the product of historical evolution, and cannot be found in the form of a single legal instrument. It is the result of natural growth, made up of enactments, understandings and customs which have practically the same force as enactments. The outstanding and almost the only example of an unwritten constitution is that of the United Kingdom. The constitutions of almost all other modern states, like the U.S.A., France, Russia, India etc. are written constitutions.

WRITTEN CONSTITUTION. The history of written constitutions does not go beyond the 18th century. "Generally

[1] Jowett's translation, pp. 147, 163, 167.

a written constitution is an instrument of special sanctity, distinct in character from all other laws, proceeding from a different source, having a higher legal authority and alterable by a different procedure. It rests on the principle of separation between the constituent and law-making powers. In states having written constitutions there are thus two sets of law-making authorities, and two bodies of law, one constitutional and paramount, the other statutory and subordinate. The latter to be valid or constitutional must conform in its provisions to the former."[1]

But it is not always in the past that constitutions have been enacted by the constituent bodies. They have been granted in the form of charters by kings as well. In the 19th century some of the states of Europe like France, Italy, and Germany had such constitutional charters granted by their rulers. In the early years of the 20th century the Emperors of China and Japan granted such constitutional charters to their subjects. After World War I, when the principle of national self-determination was widely accepted, constitutions have ceased to be the gifts of the kings to their subjects. The peoples have framed and given constitutions unto themselves.

WRITTEN AND UN-WRITTEN CONSTITUTIONS COMPARED. A written constitution, though definitely enacted at a particular time does not remain unaffected by the customs, practices, and special political situations of the country. Amendments and modifications are made to them from time to time. It is indeed impossible for human ingenuity to foresee all future needs of a nation and embody all the principles of constitutional law in a written document at any given time. As Prof. Garner remarks "much of the constitution of the United States, particularly those parts relating to the election, succession, tenure and powers of the President, the procedure and methods of the Congress, and the powers of the federal judiciary has been modified in important particulars by the force of precedent and expanded by judicial interpretation." Our Indian constitution, even though only

[1] *Political Science and Government* by Garner—p. 509.

eight years old, has been modified in regard to certain of its provisions in the light of experience. It is, therefore, incorrect to say that a written constitution has nothing of tradition and conventional element about it, that it is all written, and that it is an expression of legislative will in a written form. As Bryce correctly put it, a written constitution is enlarged by custom and judicial interpretation so that after a time the letter of its texts no longer conveys their full effect.

On the other hand the so-called unwritten constitution contains a very large written element. Much of what was formerly custom and convention is reduced to writing in course of time. A large part of the British constitution is already embodied in the form of legal documents enacted by Parliament. The great acts of Parliament, such as the Bill of Rights, merely set forth in written form what was already unwritten law. The British constitution which is unwritten differs from other constitutions which are written not merely because it is founded on conventions, but because its conventions are more numerous and relate to many more aspects of national life than the parts which are enacted.

FLEXIBLE AND RIGID CONSTITUTIONS. Therefore the classification of constitutions into written and unwritten is not very appropriate. A more scientific classification would be that of flexible and rigid constitutions, as has been suggested by Lord Bryce. "Those which possess no higher legal authority than ordinary laws, whether they are embodied in a single document or consist largely of conventions, should then be classified as flexible, movable or elastic constitutions; while those which emanate from a different source, which legally stand over and above ordinary laws, and which may be amended by different processes should be classed as rigid, stationary or inelastic constitutions. The former, though they may be written, possess elasticity and may be altered with the same ease and facility as other laws; the latter cannot be thus altered, because their lines are hard and fixed."[1]

[1] Garner—*Political Science and Government*, p. 515.

ADVANTAGES AND DISADVANTAGES OF THE WRITTEN AND UNWRITTEN CONSTITUTIONS. The advantages of a written constitution are that it is clear and definite in its provisions, that it has been prepared with great care and deliberation, and that there is little uncertainty as to the meaning of its texts. But such constitutions cannot be easily changed or amended. The process of alteration is made particularly difficult in order that it may be free from the dangers of temporary popular passion. An unwritten constitution has the advantages of elasticity and adaptability. It can be altered or amended easily like the ordinary laws. Hence in times of crisis, when the nation strongly feels that the constitution should be either altered or violated, it serves a very useful purpose. It can be stretched or bent so as to meet emergencies without breaking its framework. But when the emergencies are over they resume their old form. Such a constitution can easily take in the shocks and weather the storms of national life. But its weakness lies in its nature. It lacks stability and permanence and is in a state of perpetual flux. It is more exposed to the dangers of popular passion than a written constitution, because it can be changed like an ordinary statute. It also presents difficulties of interpretation for the law courts. Lastly, the masses in a democracy are suspicious of constitutional provisions which have not been formally enacted and are based purely upon custom and convention. They want something plain, clear and direct, and hence in modern times written constitutions are in favour everywhere. Against these arguments it may be pointed out that an unwritten constitution is a product of long evolution. It presupposes a free people which has had political consciousness and orderly development of its laws and government for a very long period. It has been possible in a country like England to develop a constitution of that type, because of the peculiar genius and history of the people. It is not found in any other country of the world.

Chapter VIII

THE FUNCTIONS OF THE STATE

THREEFOLD FUNCTIONS OF THE STATE. A study of the state naturally involves a consideration of its functions. Its functions are really the functions with which the government, as the sole agency of the state, is charged. But each state has its own conception of its duties and functions. That is due to the peculiar origin and history of the growth of each state. Some have developed very slowly, and have remained rather primitive even today. Others have grown rapidly and rank among the most progressive states of the world. Their functions, therefore, vary widely. The functions of the government, for example, of the U.S.A. or the United Kingdom are very different from that of, say, Nepal and Abyssinia. For a classification of the functions of government, however, we can adopt three distinct principles: first, what the state does to preserve its own existence and position amongst other states; secondly, what it does for the maintenance of internal peace and order, and of individual rights and liberties; and thirdly, what it does for the general welfare of the people as a whole. The first refers to the inter-state relations or as they are known today, international relations; and the second and third to the internal functions and duties of the state.

But a consideration of the functions of government also involves a consideration of what are, and what ought to be, the functions of government. In attempting a classification we have to confine ourselves to the functions that are actually performed by the government, i.e., what are, rather than what ought to be, its functions. What functions it ought to perform concerns the sphere of political ideology rather than the facts of political life. It pertains to the province of government and ends of the state. That will be discussed separately.

ESSENTIAL AND OPTIONAL FUNCTIONS OF THE STATE. If we analyse the functions of governments in the leading states of the world today, they can be broadly divided into two categories, viz., those that are essential and those that are optional. "It is admitted by all that the state should possess powers sufficiently extensive for the maintenance of its own continued existence against foreign interference, to provide the means whereby its national life may be preserved and developed, and to maintain internal order, including the protection of life, liberty and property. These have been designated the essential functions of the state, and are such as must be possessed by a state, whatever its form."[1] As against these, the optional functions are meant to promote general welfare of the people in all the aspects of social life.

CONSTITUENT FUNCTIONS AND MINISTRANT FUNCTIONS. Dr. Woodrow Wilson offers a division of the functions of government into constituent functions and ministrant functions. Constituent functions are those which relate to the very existence of the state, and constitute the basis of civic life and organization of society. They have to be performed by all governments. The ministrant functions are those which have reference to the general welfare of the society. They are undertaken not by way of governing, but by way of advancing the general interests of the society. They are optional depending upon the expediency or convenience of the state. They assist, but do not constitute, social organization. On this basis a classification of the functions of government as suggested by Wilson will be as follows:

"*I. The Constituent Functions*:

(1) The keeping of order and providing for the protection of persons and property from violence and robbery.
(2) The fixing of the legal relations between man and wife, and between parents and children.

[1] Willoughby—*The Nature of the State*, p. 338.

(3) The regulation of the holding, transmission, and interchange of property, and the determination of its liabilities for debt or for crime.
(4) The determination of contract rights between individuals.
(5) The definition and punishment of crime.
(6) The administration of justice in civil causes.
(7) The determnation of the political duties, privileges, and relations of citizens.
(8) Dealings of the state with foreign powers; the preservation of the state from external danger or encroachment; and the advancement of its international interests.

These will all be recognized as functions which persist under every form of government.

"*II. The Ministrant Functions*:

It is hardly possible to give a complete list of those functions called Ministrant, so various are they under different systems of government. The following partial list will suffice, however, for the purposes of the present discussion:

(1) The regulation of trade and industry, . . . the coinage of money and the establishment of standard weights and measures, laws against forestalling and engrossing, the licensing of trades, etc., as well as the great matter of tariffs, navigation laws, and the like.
(2) The regulation of labour.
(3) The maintenance of thoroughfares,—including state management of railways and that great group of undertakings which we embrace within the comprehensive term 'Internal Improvements'.
(4) The maintenance of postal and telegraph systems, which is very similar in principle to (3).
(5) The manufacture and distribution of gas, the maintenance of water-works, etc.
(6) Sanitation, including the regulation of trades for sanitary purposes.

(7) Education.
(8) Care of the poor and incapable.
(9) Care and cultivation of forests and like matters, such as the stocking of rivers with fish.
(10) Sumptuary laws, such as 'prohibition' laws, for example."[1]

THREE SCHOOLS OF THOUGHT CONCERNING THE SCOPE OF STATE ACTION. The functions given above indicate what normally a modern state with a democratic government is expected to perform. That does not indicate what ought to be its functions or what a state ought to do, and what it ought not. In other words, we have to consider in this connection the proper sphere of state action. With the growth of political consciousness, and the widening of democracy, people expect much from the state. They expect that the state should take up functions, which would promote their welfare in a variety of ways. The state should provide, for example, for education, find work for the unemployed, look after public health and sanitation, improve communications, raise the living standards, care for the sick, indigent and old, and stand forth as a welfare state in the real sense of the word. The care of the individual should be its first charge. There has thus come about a great change in the views of the people regarding the province of the state. There was a time when the individual lived for the state, and supplied most of his needs himself. Now the state is expected to satisfy most of his needs and exist for the individual. That has enlarged the sphere of state action. The areas of individual life and activities are more and more restricted to the extent that the state is called upon to operate in those areas. That imposes limitation on the freedom of the citizen. For example, if government were to find work for the unemployed and organize national industries it means denial of individual initiative. This has naturally made some people suspicious and they question the propriety of enlarging the scope of state action.

[1] Wilson—*The State*, pp. 43-44.

They advocate that the proper scope of state activities can be secured only by a careful balancing of the social and individual interests. On this divergence of views concerning the scope of state action three schools of thought have developed, known as the individualistic, socialistic, and anarchistic schools, which we may now proceed to consider.

INDIVIDUALISTIC SCHOOL. The individualistic school is based on the ideas of thinkers like John Stuart Mill and Herbert Spencer. The individualistic theory is also known as the *laissez-faire* theory. It "may be briefly stated in the proposition that the sole duty of government is to protect the individual from violence or fraud. According to this theory the positive interference of the state with the individual even in his own interest is not justified. Nor is the state justified in undertaking operations of an economic character, or in imposing restrictions (other than in prevention of violence or fraud) on the economic activities of its citizens. A schedule of government functions admissible on a purely individualistic plan would include the maintenance of an army and navy, courts of justice, and a force of police, the enforcement of criminal law and of statutes in reference to sanitation, adulteration of food, inspection of steam-boats etc., these being indirectly protective in their character; but it could not comprise the conduct of the post office, the maintenance of hospitals and poor-houses, or the operation of railroads. Only such actions on the part of the state as were directed to prevent the interference of its citizens with one another, would be legitimate."[1] The individualists base their theory of state action on the assumption that government is a necessary evil. It is necessary because of the imperfections of mankind. The state, therefore, is justified in interference for the purpose of protecting its citizens against worse interference on the part of other citizens. Its aim should be the "hindering of hindrances" to the life, liberty, and property of the people. It must pursue no other object than that which the people

[1] Leacock—*Elements of Political Science*, pp. 338-39.

cannot pursue of themselves, viz., security. The individualists base their arguments on a theory of justice. As a matter of justice they argue that the individual must be left alone. It pays him to be let alone on economic grounds. On purely scientific grounds, that is, from a consideration of the evolutionary nature of human life and progress, it is fair that the individual should struggle for himself and survive, or fail, according to his fitness.

On economic grounds it has been pleaded that if the individuals are left free to follow their own choice in the use of their capital, the sale of their labour, or the renting of their property, it will best suit the interest of everybody. For, capital and labour will thereby flow into the channels which will yield the highest profits. Similarly, if articles are freely exchanged, an increased demand in any commodity will lead to a rise in prices and to an additional supply of that commodity, so that ultimately an equilibrium in prices will be reached. This process will establish a state of economic harmony. The individual will be able to obtain the greatest advantage for himself and that will be conducive to the well-being of all.

Herbert Spencer advocated individualism on the basis of a biological analogy. He adopted the doctrine of the survival of the fittest to prop up his theory. The natural process of evolution should not be disturbed by state action, he argued. If the state helped the poor, the sick and the aged, it would help survival of the forms which have no claim to survive, and whose continuance is detrimental to the general interest of the society. "It seems hard", he writes "that a labourer incapacitated by sickness from competing with his stronger fellows should have to bear the resulting privations. It seems hard that widows and orphans should be left to struggle for life or death. Nevertheless, when regarded not separately, but in connection with the interests of universal humanity, these harsh fatalities are seen to be full of benevolence." This represents the extreme view of individualism.

CRITICISM. But if that is true of the state it must be

equally true of the individuals. That is to say private charities and aids to the poor and sick should also be condemned. In fact as Prof. Leacock has very aptly pointed out "if the sole test of fitness to survive is found in the fact of survival, then the prosperous burglar becomes an object of commendation, and the starving artisan a target of contempt. If it is assumed that widows will die unless the government helps them, and usurers will grow rich unless the government stops them, this seems a very poor reason for saying that widows ought to die and that usurers ought to grow rich."[1]

Besides, the biological analogy ignores the essential difference between mankind and the lower forms of life. Man can change his environment to suit his needs and thus remove the great waste that the process of natural selection entails. The lower forms of life are entirely subject to their environment, and to the process of natural selection. Lastly, survival of the fittest means only the fittest under given conditions, and not necessarily the survival of the best. Man can transform his conditions to make the fittest a more desirable product.

The theory of *laissez-faire* which was advocated by the individualists in the early nineteenth century has been discredited in recent years. A strong reaction has set in against the view in consequence of the conditions arising from the growth of manufactures, congestion of population in cities, unprecedented development of democracy, evils of capitalistic system of industry, and the overall changed social and economic conditions of life. People now look more to the government to remove the ills than to individual efforts. They insist upon an extension of its functions in order that it may cope with the needs of the new economic situation. Labour legislation, agrarian laws, public health regulations, organization of public-utility services, and similar other things have been taken up in recent years by the government in response to public opinion. The areas of state action are indeed increasing and not shrinking due to the force of circumstaces. That is in the fitness of things. For, as Prof. Huxley observed "the higher

[1] Leacock—*Elements of Political Science*, 346.

the state of civilization the more completely do the actions of one member of the social body influence all the rest, and the less possible is it for any one man to do a wrong without interfering more or less with the freedom of all his fellow citizens. So that even upon the narrowest view of the functions of the state it must be admitted to have wider powers than the advocates of the police theory are disposed to admit." In other words, as civilization progresses men become more dependent upon one another and upon society as a whole, and hence the role of the state must increase correspondingly in order to satisfy their common wants.

SOCIALISTIC SCHOOL. In contrast to the individualists the socialists want to enlarge, and not restrict the scope of state action to its utmost limits. Their aim is to substitute for the present individualistic pattern of society based on capitalism, a cooperative commonwealth, that would control all the means of production, regulate distribution of what is produced on an equitable basis, and liquidate capitalism. They would transfer to the state control over land and the means of production, and would limit private property to consumption goods alone. The state would take over all industries, and replace private enterprise and competition. It would organize production, in a manner so that duplication, competition, and wastefulness are eliminated. It would pay the managers and labourers in an equitable manner. Free contract between labour and capital, and free competition between the producers which are responsible for much social evil today will be replaced by a system that would wipe out capitalism, give labour its due, and regulate production on the basis of needs. Everything would be held in common, each one producing according to his capacity and receiving according to his needs. That would remove the injustice, wastefulness, and selfish methods of the present industrial system. Self-interest as the main motive of human action would be replaced by an altruistic desire for social usefulness. Today goods and services that are offered to the society have only one motive, viz., of profit. In a socialistic pattern that

will change, and goods and services which are useful to the society will be produced. "The economic needs of the community will be accurately estimated, and the available land, labour, and capital carefully apportioned, so that just the quantity of each kind of goods required will be produced. The duplication of plants and the excessive production of particular goods, now so common, will be avoided; the expenses of advertising and competitive selling will be saved; and finally the production of goods that are harmful rather than beneficial to those who consume them will be suspended."[1] This can be possible only under state control. If the state steps forth as the sole organizer of industries there would be no retail stores, for example, in considerable number, distributing the same goods, nor would there be numerous factories producing the same kinds of goods. "Perhaps the simplest and best illustration of the point in question is seen in the contrast between the delivery of letters at consecutive houses and in the neighbouring streets by a postman (an official under collective management) and the waste of time and labour involved by the spasmodic supply of milk and groceries at various houses throughout an extensive district by the employees under individual management."[2]

Therefore the socialists advocate that government should control all the means and processes of production, be the sole employer of labour, replace the competing retail stores by its own distributing houses, and extend its functions to the whole domain of economic operation. Individuals should have a property right to things they actually consume—food, clothes, furniture etc. There is however a difference of opinion among the socialists themselves about the distribution of income and the technique of changing the individualistic capitalistic order into a socialistic one.

CRITICISM. But this scheme of state action is not an unmixed good. The difficulties of administration are enormous.

[1] Seager—*Introduction to Economics*, p. 525.
[2] Leacock—*Elements of Political Science*, pp. 353-54.

Equally enormous are the opportunities for corruption, inefficiency and intrigue. Under a capitalistic system the connection between business and politics is the source of many evils; under a socialistic system business and politics would be rolled into one, and that is dangerous from any point of view. After all it must be remembered that the state exists for the sake of society, and not society for the sake of the state. In a socialistic scheme the state swallows up the society, and the individual along with it. Further, the most objectionable part of individualism is that it has so distorted competition as to put it into the power of some to tyrannize over many, as to enable the rich and the strong to combine against the poor and the weak. Free competition has become ruthless, unfair, cut-throat competition, and has strangulated love, compassion, and social justice. But the remedy would not lie, as the socialists suggest, in abolishing competition altogether. It is not competition that kills but unfair, cut-throat competition. That certainly can be prevented by state action. Lastly, the claim that in a socialistic order of society altruism would be substituted for self-interest appears to be vague and unreal. If in a social set-up the individual finds that no initiative is left to him, there is no scope for his enterprise, his work, wages and leisure are assured, and he lives and moves with limits set on his free will, how can he develop altruism? He can develop, if at all, the altruism of a tiger in a circus.

ANARCHIST SCHOOL. While the individualists regard the state as a necessary evil, the anarchists look upon it as an unnecessary evil. They seek to abolish government altogether, because according to them it is essentially an engine of oppression and exploitation. They assume that human nature is fundamentally good, but the state has contributed to its degeneration. It is the result of selfishness and force which the state embodies. Prudhon in France outlined his theory of anarchism by a double attack on the state and property. He held that property was theft, and the state helped to perpetuate inequalities due to private property. The anarchists are

"opposed to every existing system of government not only because it exercises compulsion upon the individual without his consent and is therefore an enemy to liberty and genuine self-government, but also because all governments without exception have proved themselves inefficient; they are arbitrary and tyrannical and therefore hateful; they are conducted in the interests of the privileged classes; the alleged equality of treatment which they profess to mete out to all has no real existence."[1] Hence the state is an unnecessary evil. It should be destroyed according to one section among them, by violence, and according to another section by means of argument and propaganda so that ultimately mankind is convinced of the uselessness of the state.

As a substitute for the "coercive" state they want a system of voluntary associations and arrangements in which each individual would be free to join or not as he likes, and from which he might withdraw at will. These associations would perform a few essential functions of government like the preservation of peace and order, maintenance of defence, etc. They would offer their services to those who needed them, and as a result of competition the most efficient would be most in demand. Thus the anarchist regime would banish force and compulsion altogether, and set up a system of complete liberty and self-government on the basis of free consent. At any rate such a regime envisages functions of government which would relate to the security and peace or such other things as a group of people would like it perform.

CRITICISM. But this view is open to severe criticism, and untenable in the face of facts. It is questionable to assume that governments are an unnecessary evil, that they are founded on force and born of oppression. We have already observed elsewhere that will, not force, is the basis of the state. Force and restraint are necessary for certain purposes in all human communities. If all restraint on individual freedom was removed, the result would be ceaseless conflict

[1] Garner—*Political Science and Government*, p. 448.

among individuals. "The law of human life from the craddle to the grave is the law of limitation." Liberty of some always presupposes restraint on the part of others. And even if, as the anarchists argue, there was no rule of force by government, the majority could still band themselves together and use force against the minority. The anarchist ideal of a community in which no acts are forbidden by law is not, at any rate for the present, compatible with the condition of the world in which they live. Imagining for a moment that human nature is essentially good, and there is no need for use of force, what about the acts of those who are mentally perverted, morally depraved, or criminally inclined? It has been correctly pointed out by Sir John Seeley that whatever in human history is great or admirable has been found in governed societies. It has been the result of the imposition of restraint upon liberty. "In all states there are social, economic and political evils due in large measure to bad, inefficient, indifferent or corrupt government, which have tended to discredit the state in the minds of many persons and to create contempt for the authority of government." But that does not justify a wholesale rejection of government.

Chapter IX

THE EXTERNAL ASPECT OF THE STATE

THE STATE is a sovereign body and its sovereignty is unlimited. It exercises absolute authority over all the individuals within the state. It renders no obedience to any organization within or outside the state. Nevertheless, it does not exist in a vacuum. There are numerous states each claiming sovereignty within its own territorial limits. Even so, they do not function in isolation. They come into contact with one another, and enter into a variety of relationships. Their citizens maintain contacts and communication, carry on trade and commerce, and establish intellectual and cultural ties among themselves. The states enter into treaties and engagements for purposes of military aid, commerce, communication, transport etc. These contacts create links between states, and are known as interstate or international relations. They call for conformity with a definite code of conduct in their dealings with one another, and the rules which determine their dealings are known as international law.

BRIEF HISTORY OF INTERSTATE RELATIONS. Leaving out the period when people lived a primitive life and in tribal groups, of which history has hardly any record, the states maintained some relationship with one another from very early times. Generally these relationships were based on certain understandings and obligations. In Ancient India kings maintained certain relationships with one another. They had a definite code of interstate relations. These were well known rules followed during war and peace. Chandra Gupta Maurya had the Greek ambassador Megasthenes in his court. Asoka sent embassies to countries like Iraq, Egypt, Cyrene, Burma, Ceylon etc. How the interstate relations in Ancient India were regulated and recognised can be read from

Kautilya's *Arthashastra,* which devotes a chapter to it. In the medieval times Indian rulers like the Hindu kings of Vijayanagar and Muslim kings of Delhi maintained relationships among themselves, and with the kings outside India. Akbar, for example, maintained diplomatic contacts with Abdullah Khan Uzbeg of Central Asia and the Shahs of Persia. That is a brief outline of the interstate relations so far as India is concerned. It is customary for the Europeans to think that interstate relations so far as Europe is concerned can be divided into three stages. The first would cover the period from the origins of European civilization to the rise of the Roman Empire; the second, the period from the rise of the Roman Empire to the Peace of Westphalia (1648); and the third, the period from 1648 to the present day.

FIRST PERIOD. European history refers to the interstate relations among the city states of Greece, like Athens and Sparta. The Greeks also had commercial relations with foreigners, and made treaties and alliances with their kings. "Among the Greeks themselves war was cruel, and breach of faith common. A maritime code, which was developed by Rhodes, and which formed the basis for later commercial codes, was probably their greatest contribution."[1] The Romans built up a vast empire after the famous long-drawn Punic Wars. Their extensive maritime activities and relations with the various Italian tribes called for wider contacts, and they entered into various types of relationships with the tribes and kings around them. They had some ideas of international conduct, but their ideas did not assume the form of a code of regulations. *Jus gentium* which is attributed to the Romans was not so much a code of international conduct as a code of regulations which applied to the dealings of citizens belonging to different nations.

SECOND PERIOD. In the second period the rise of the Roman Empire and the absolute authority of the Caesars did

1 Gettell—*Introduction to Political Science,* p. 134.

not much help the growth of a code of international conduct. After the break-up of the empire and rise of feudalism, there was more political life in Western Europe. Conflicts between the feudal rulers on the one hand, and between the rulers and the Popes on the other, created a state of political confusion. There was nothing like any obligations between the states in times of war and peace. Breach of faith and unscrupulous conduct characterised the relations between kings and states during this period.

THIRD PERIOD. It was only in the third period that the theory of interstate relations was built upon any principle. Accepting political independence and territorial sovereignty as the twin basis of interstate relations, Hugo Grotius, a Dutch jurist, laid down the foundations of a theory of international relations. He and his followers assumed that there existed a law of nature which instinctively influenced man in his dealings with his fellows and dictated the necessity of moral obligation between men. It existed even before any system of law and government came into being and could be discovered by the light of human reason. "The principles of natural law," wrote Grotius "if you attend to them rightly, are in themselves patent and evident almost in the same way as things which are perceived by external senses." Though the assumption of such a law is essentially fallacious it served a useful purpose in offering a possible starting point for constructing a system of mutual rights and duties existing between states without a common superior. It introduced a moral element in the interstate relations, and made the states less unscrupulous in their dealings. But these relations came gradually to be regulated by successive treaties and conventions between the states of Europe only after the Peace of Westphalia (1648). For it was then that certain more or less well defined principles emerged which determined their intercourse during peace and war. At the Peace of Westphalia the sovereigns of Europe except the Pope and the Sultan of Turkey "united to proclaim formally the erection . . . of an international system of states, unequal indeed in power but

claiming each to be independent and each to exercise an exclusive jurisdiction within definite territorial limits". Treaties of similar significance were concluded subsequently. By the Treaty of Versailles 1783 the independence of the United States was recognised, and by the Treaty of Paris, 1856 the independence and integrity of the Ottoman Empire was guaranteed. Other treaties laid down the lines of conduct for future guidance. The treaty of 1841 referred to the navigation of the Dardanelles and the Bosphorus. The principle that "free ships make free goods", first adopted by the United States, gained ultimate recognition in the Declaration of Paris in 1856. The obligation of neutral powers in preventing their territory from being used as a base of operations by belligerent states was proclaimed by the Treaty of Washington in 1871. At the end of the First World War the Treaty of Versailles laid down certain important principles like self-determination on the basis of which a number of subject peoples of Europe attained freedom and formed their own states. Thus periodical conventions in times of peace and treaties at the end of wars became the basis of a code of international conduct. The principles enunciated on these occasions and adhered to by the states subsequently gave rise to what is known as international law.

SOURCES OF INTERNATIONAL LAW. The sources of international law are classified as follows:—

1. Roman Law.
2. Treaties and conventions.
3. State Manifestos.
4. The work of great jurists.
5. International conferences and arbitration tribunals.

Most of the states of continental Europe derived their legal principles from the Roman law. "Besides, the Roman idea of *jus gentium* or system of law common to all nations, led to the idea that back of all laws made by states existed a code of moral obligations or natural law, and that this should be

binding on all states."[1] We have observed already how at different times states have combined to lay down certain principles in their treaties and conventions for future guidance in their dealings during peace and war. International law derives its binding force from the consent of the states. Treaties and conventions are agreements, which the states promise to honour. Therefore international law is based upon treaties and conventions. "In addition to deliberate assent to treaty provisions, nations may express their adherence to rules of international coduct in various other ways. Public documents issued by a state in the form of proclamations or manifestos to its subjects, or the outbreak of a war enjoining their observance of certain regulations in reference to belligerents and neutrals, are of this class. A further source of international law may be found in the decisions of prize courts, or special tribunals whose business it is to adjudicate on the legality of captures made at sea in time of war. Lastly may be cited the opinions expressed by great jurists who have written on the subject.... But since all written laws and regulations must be submitted to the process of interpretation, the opinion of an eminent specialist as to the proper interpretation of a recognised formula, is evidently of force, and it has been always customary to cite as testimony the opinions of international jurists."[2] It has been pointed out by jurists like Kent that no civilized nation will seek to defy the opinions of eminent jurists where there is agreement between them in respect of any principle of international conduct.

After World War I the long established diplomatic practice of conducting secret negotiations and concluding secret treaties and alliances came to be discredited. The League of Nations was set up and it became the forum of international discussions and exchange of views. Everything was placed before the public opinion of the world. International conferences and tribunals were organized to settle disputes between states and regulate their mutual relations. After World War II the

1 Gettell—*Introduction to Political Science* p. 137.
2 Leacock—*Elements of Political Science*, pp. 91-2.

League of Nations was replaced by the United Nations Organization. A regular organization representing most of the states of the world thus substituted the process of spasmodic conferences and tribunals. Consequently it has become the most prolific source of international law today.

CAN INTERNATIONAL LAW BE PROPERLY REGARDED AS LAW? International law, as we have seen above, seeks to regulate the relations of states towards one another. It assumes that each state is a sovereign political organization, absolutely equal in status with every other state. There lies the anomaly. How can a sovereign political organization obey laws that are not of its own making? As Prof. Gettell has pointed out "if the fundamental distinction that separates legal from moral rules be that the former are, and the latter are not, commands given and enforced by a determinate authority, then international law is not properly law."[1] In strict theory international law may not be law, because there is no sovereign whose command it is, and there is no power which can enforce it. If the sovereign states were forced to obey it they would cease to be sovereign, and if they cannot be forced to obey it, it ceases to be law. But that does not take away from it the substance and sanction of law. Its substance lies in the purpose it seeks to serve, that is, the common good of a portion of mankind; and its sanction lies in the moral acquiescence of a number of states. And if a power was needed to formulate and give effect to it, such a power may be imagined as existing in the shape of a general federation or league of states like the League of Nations or the United Nations Organization. In the modern world such a power appears to be an imperative necessity for purposes of giving effect to the accepted principles and provisions of international law and preventing their violations. After World War I, the League of Nations, and after World War II the United Nations Organization, were formed with agencies to interpret and apply international law to disputes and questions

[1] *Introduction to Political Science*, p. 141.

arising between states. They have been fairly successful in these objectives. In fact the public opinion of the world is gradually seeing the wisdom of forming an agency to resolve the differences and disputes between states by means of judicial arbitration. There has been set up what is known as the International Court of Justice for this purpose. But its decisions cannot be enforced in the same manner as the judicial decisions of a law court in a state. That is due to the fact that the United Nations Organization is a voluntary organization. It is not a superstate, and the member states have not formed a federation and resigned their sovereignty. Owing to these conditions international law may not be regarded strictly as law. But it is law in the making. It therefore resembles as Sir Federick Pollock said, "those customs and observances in an imperfectly organized society which have not yet fully acquired the character of law, but are on the way to become law." The world community is an imperfectly organized body today. But there is such a volume of moral support of the states of the world behind it that the violation of its provisions often leads to the loss of prestige of the states violating it. Since international law embodies certain well-recognized principles of justice, morality, and expediency, that seek to regulate the dealings of human communities, if they are violated in a wanton manner it often provokes war. When war is known as the final penalty for breaches of international law, and the arbitrament of war is terrible in its consequences, the ultimate sanction behind international law is obvious. Hence it will not be far wrong to regard international law as law, with certain limitations. The limitations are firstly, the sovereignty of the states, which are subjects of the law; secondly, the status of the international court of arbitration which cannot enforce its decisions; and thirdly, the absence of a neutral power that can compel adjudication of all interstate disputes and differences by the court of arbitration.

INTERNATIONAL ARBITRATION. In recent years, particularly after World War I, the states realized the wisdom

of settling their differences and disputes by arbitration, rather than by war. That has been due to the increasing costliness of war, the dislocation that it causes not merely to the industrial life of the belligerents but to that of all the countries associated with them, and the growing interdependence of the human communities in respect of communication, transport, and economic relations. The first attempt to set up an international court of arbitration at the Hague was made by a convention of Great Powers in 1899. But nothing very substantial was achieved till the end of World War I. When the League of Nations was formed in 1919 it established a Permanent Court of Justice competent "to hear and determine any dispute of an international character which the parties thereto submit to it" and to "give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly." The Council of the League had the power to regulate the constitution of the permanent court, which continued to be located at the Hague, though the seat of the League was at Geneva. But the International Court often failed to give effect to its decisions because the League did not possess the authority or means to give the necessary support to the Court for the purpose. After World War II, the United Nations replaced the League, and today there are about eighty states as its members. Its aim is to maintain international peace and security and to cooperate in establishing political, economic, and social conditions under which this task can be properly achieved. It has therefore set up a General Assembly, a Security Council, an Economic and Social Council, a Trusteeship Council and an International Court of Justice besides its own Secretariat. The International Court is located at the Hague and consists of a body of fifteen independent judges elected from among the member states. The Court has jurisdiction in all cases which the parties refer to it and in all matters provided for in the United Nations Charter or in treaties and conventions in force. The Court may apply in its decision (a) international conventions, (b) international customs, (c) the general principles of law recognized by civilized nations, and (d) as subsidiary means for

the determination of the rules of law, judicial decisions and the teachings of highly qualified publicists of the various nations.

This is the organ set up by the U.N.O. to ensure justice and fair play in the dealings between different states. Though the authority of the U.N.O. is behind it, yet its decisions are not binding and cannot be enforced, except with the acquiescence of the parties concerned. But under the conditions prevailing in the world, it is expected to win greater and greater support of the member states, and be an effective agency in the settlement of disputes, prevention of war, and preservation of peace. The future envisages the formation of a world socity, may be, in the shape of a federation, confederation, or commonwealth of the states of the world. When that comes into being the International Court will play a very important role, and the international law will be law in the strict sense of the word.

Chapter X

THE END OF THE STATE

DIVERGENT VIEWS ABOUT THE END OF THE STATE. We have so far discussed the theory of the state in all its aspects. But before we pass on to a study of the structure of its constituent organs and their functions, we have to understand the purpose or the end for which the state exists. Is the state an end in itself? Or is it a means to an end? Prof. Giddings thought that the state was "the mightiest creation of the human mind, the noblest expression of human purpose."[1] What is that purpose? According to the individualists the state is a necessary evil, while according to the anarchists, it is an unnecessary evil. Aristotle thought that the state existed for the sake of good life, and Bentham that it existed for the greatest good of the greatest number. Securing fullest freedom for the individual was the end of the state according to the individualists. The idealists regarded the state as the embodiment of pure reason, and the voice of the people as the voice of God. Hence according to them the fullest development of human personality, human reason, and civilization was the end of the state. The socialists or collectivists envisaged the state as a classless community, of which the supreme end is to secure complete equality of all and equal benefits of life to all. There are others who think that the state should cease to be sovereign and become an association of industrial and vocational corporations, in order to achieve the common well-being of the community in a better way. Such are the divergent views held regarding the end of the state.

To the Greeks the state was an end in itself. The individual, as such, did not exist. He had his being merged in the state. The Greeks drew no distinction between the state and society.

[1] *The Responsible State*, p. 48.

"The state was the supreme fact of life, and the efforts and actions of individuals had to flow into it just as a river flows into the sea."[1] As against this many, especially in England and America, have regarded the state as a mere institution, artificially designed to promote the welfare of the individual. If this view were correct the state would not be justified in levying taxes from the rich for the benefit of the needy and the poor. Neither would the sacrifice of life and property at the time of war be justified, if individual welfare were the only end. Usually the welfare of the state and that of the individual coincide, but sometimes they may diverge and occasionally they may be opposed. Bluntschli thought that the end of the state consisted in "the development of the national capacities, the perfecting of national life, and finally its completion, provided of course that the process of moral and political development shall not be opposed to the destiny of humanity." Burgess outlined the ends of the state in a historical order which is dynamic. It would start with government and liberty as its primary ends. Next it would seek the perfection of nationality or the development of popular genius. Finally, it would end with the perfection of humanity —the civilization of the world. Von Holtzendorff holds that the state has a triple end. "The first is power by which the state may preserve its existence and position against other states and its authority over all individuals and associations of individuals within itself. The second is individual liberty, or that sphere of freedom which the state marks out for the individual, and protects it against encroachment on the part of the government and other individuals. The third is the general welfare, which the state must secure by maintaining peace and order and by aiding and educating its subjects."[2]

DIFFERENT POLITICAL IDEOLOGIES BASED ON DIVERGENT VIEWS ON THE END OF THE STATE. Whether the state is an end in itself or the means to an end,

[1] Gilchrist—*Principles of Political Science*, p. 460.
[2] Gettell—*Introduction to Political Science*, p. 378.

and whether that end consists in the individual good or collective happiness, perfecting of the human personality or equal sharing of the material benefits of life, the divergence in the conception of the end of the state has given rise to different political ideologies. These ideologies have been responsible for determining the forms of the state, and the variety and scope of their functions. For example, Democracy has arisen as "the government of the people, for the people and by the people", because its end is liberty of the individual which is the basis of the well-being of the community as a whole. Communism has set up a dictatorship of the proletariat, because its end is a classless society in which all are equal and therefore share equally the material benefits of life. We may now proceed to study the salient features of these political ideologies one by one.

IDEALISTIC CONCEPTION OF THE END OF THE STATE. Historically the earliest of these ideologies is the idealistic conception of the end of the state. It goes back to the times of Plato and Aristotle. According to them the individual is capable of living a good life, and of realizing the highest ends of his existence only as a member of the state. They therefore idealized the state to the point of deification. The state can do no wrong. Its authority good or bad must be obeyed without question. Resistance to its commands, however unjust or wicked, cannot be justified. It possesses a will and rights, and has its own standards of morality and values as distinct from those of the individual. The state and not the individual is the basis of civilization and progress. Therefore the individual can develop as a part and parcel of the state. He lives for the state and the state is an end in itself.

The idealism of the ancients was further elaborated by Kant and Hegel in Germany, and by Green and Bosanquet in England. Kant regarded the state as divine in essence and infallible. To Hegel it was "the reality of ethical spirit", "perfected rationality", and "absolute fixed end in itself". The individual attained his real freedom as a member of the state.

As a part of the state only he realized his ethical end. Since the state is an end in itself, and embodies the realization of the moral idea of man, the individual derives his rights from the state and can have no rights against it. In England the pure idealism of Kant and Hegel did not have much influence. Green followed Hegel in emphasising the moral value and majesty of the state and in claiming that it is the source of individual rights. At the same time he held that "the life of the nation has no real existence except as the life of the individuals composing the nation." He and his follower Bosanquet swung towards individualism at the same time as they spoke of the omnipotence, absolutism and divinity of the state. Bosanquet emphasised the development of individual personality, and regarded that the state has value to the extent that it helps the development of the individual personality. It was not therefore that the state was an end in itself but that the end of the state and of the individual was to be harmonised by the concept of a common good. That was the idealists' view.

INDIVIDUALISTIC VIEW. A reaction from the concept of idealism has taken the form of individualism. We have already discussed the individualistic theory of the functions of the state. It seeks to limit the functions of the state to the bare minimum in order that the individual may have the maximum of liberty and grow to his full stature. The state in other words, should exist only for the individual. That should be the end of the state. Its powers and functions should be related to the single purpose of "hindering of hindrances" in order that the individual may grow. On the complete development and good of the individual, the individualists base the common good of the nation, and growth of the civilization. In no sphere, social, economic, political and intellectual, should the state operate in such a manner that the individual may find the highest ends of his existence frustrated. As John Stuart Mill pointed out "if a man's conduct affects the interest of no person besides himself the state has no right to interfere." That summaries the

individualists' attitude towards the state and their conception of the end of the state.

ANARCHIST VIEW. Anarchism in politics seeks to put an end to the state itself rather than envisage an end of the state. It is therefore known as nihilism, or doctrine of negation. Prudhon, Bakunin, Kropotkin and Godwin are among its exponents, and we have already discussed their scheme of state functions in a previous chapter. The greatest of its exponents, Leo Tolstoy, denounced the end of the state as consisting in violence, greed and exploitation. He wanted that the state be destroyed in order that the teachings of Christ, viz., love, charity and sacrifice be the basis of a new social order. Private property was to be abolished. But these ideas were perverted and men like Netschaiev preached revolution by throwing of bombs, shooting, poisoning and otherwise destroying the scheme of present-day state and society. Nihilism thus envisages no end for the state. It appeals to the baser passions of man to effect a revolution by bloodshed that would destroy the state, and then usher in an era of reconstruction and happiness.

SOCIALISTIC VIEW. While the idealist preached that the state was an end in itself, and the individualist, that the state was the means to an end, the Socialist advocated that the state existed for the all-sided development of the community as a whole. They did not distinguish the individual from the community, and between the state and society. When the means and processes of production are taken away from individual ownership and control, and transferred to the state, the principle involved is that the well-being of the individual is better secured if identified with the well-being of the state. When private property is abolished it is assumed that the material wealth of the community should be evenly distributed in order that all be equally benefitted. Thus socialism envisages an end of the state in the form of universal uplift and common good of the community, without emphasising the status and share of the individual. Hence the state would

impart education, look after the health of the people, guarantee employment, assign houses for living and so on, in order that individual well-being, health and happiness did not suffer when mass uplift and general well-being of the community received the highest priority and attention of the state. Conditions are so provided that each produces according to his capacity, and gets according to his needs. That is the socialistic conception of the end of the state.

The theory of socialism was elaborated and perfected by Karl Marx in his *Das Capital.* Others have adopted it with modifications here and there, but the main argument is the same. Marx and his followers have denounced the state as the outcome of original aggression of the strong against the weak. The institution of private property which the state upholds is a result of exploitation by the stronger class that is, propertied class, of the mass of workers who live in a state of dependence known as wage slavery. These two factors—aggression and exploitation, have created the most deplorable conditions in society, which consists of a few rich and many poor. The few rich have monopolised political power, in addition to the means of production. They have thus all the instruments of perpetuating their hold on the state and society. So long as they retain that hold, the misery of the masses cannot be ended. Hence the ideal of socialism is to destroy the class of property owners, and establish a dictatorship of the proletariat. This ideal is sought to be attained either by the gradual process of evolution or by the violent and quick methods of revolution. The evolutionary socialism has taken the forms of Fabianism and Guild Socialism, whereas the revolutionary socialism has taken the forms of Syndicalism and Communism.

FABIAN SOCIALISM AND GUILD SOCIALISM. Fabian Socialism arose in England. Its main exponents were Bernard Shaw, Sidney Webb, Harold Laski, Graham Wallas, Richard Tawney, G. D. H. Cole and others. They advocated a modified form of Socialism, but their technique was 'go slow'. The term Fabian was adopted after the name of the

Roman General, Fabius, who by his delaying tactics against Hannibal saved Rome. The Fabians rejected the Marxian theory of value and class war. "Value they looked on as the creation of society as a whole, not of manual labourers only, and they saw no need for class conflict, for the reason that the trend of social legislation was proceeding inevitably towards socialism. But the socialism they envisaged did not mean a transfer of ownership to the workers, but to society as a whole, in which there was a place for all classes".[1]

Some of the Fabians, like G. D. H. Cole and S. G. Hobson, went further and outlined a theory of industrial self-government or functional democracy, which came to be known as Guild Socialism. The exponents adopted the Marxian ideas of class struggle and wage slavery, and utilized the trade unions to give shape to their ideas. They wanted change in the economic pattern of the society to precede changes in the political set-up of the country. They demanded a complete transfer of the industries of the country to the industrial labour. Each industry should be like a self-governing corporation guided and controlled by its own craftsmen. "Guilds ... would be local and national, arranged on a hierarchical system, and the state would either act as the supreme co-ordinating authority or would disappear altogether in favour of functional organization."[2] But this scheme of industrial democracy did not have much influence in England. Both Fabianism and Guild Socialism died out gradually as the British democracy adopted some of their ideas in its programmes of social and economic reconstruction.

SYNDICALISM. Syndicalism arose in France. It took up the Marxist idea of class war. In France before World War I, it exercised a great influence over the masses. The Syndicalists preached class war of the proletariat against the bourgeoisie, that is, the owning class. They, like the Guild Socialists of England, utilized the trade unions to build up a new regime.

[1] Gilchrist—*Principles of Political Science*, p. 448.
[2] Gilchrist—*Principles of Political Science*, p. 449.

But unlike the Guild Socialists, they resorted to violent methods like the boycott, sabotage, strikes, and destruction of machines to paralyse the existing economic system. Their's was a scheme of what may be called revolutionary trade unionism. Through the trade unions they agitated for better wages, shorter periods of work, share in the profits etc., and put forward claims to take over the management and control of industry. They too like the Guild Socialists wanted collective and cooperative management of the industries, and on that basis establish a pattern of society in which there would be no need of compulsion or force, and from which the state would be easily wiped out. After World War I, the theory lost favour in France and gradually died out.

COMMUNISTIC VIEW. Communism however has had a more steady development in Europe. During World War I the Bolsheviks who believed in class war, and in force, as the only instrument of establishing the dictatorship of the proletariat captured power in Russia. They used force ruthlessly and destroyed the royalty, the aristocracy and the property owning classes. Then they abolished private property, nationalised land and all other means of production, and introduced a new scheme of government, law, labour and social securities. Communism has since then firmly entrenched itself in Russia, and has created a new state and society, which has evoked mixed sentiments in all countries. Some admire it, some condemn it. Nevertheless, as an international force it has a tremendous appeal to the peoples of the world. It takes its stand on the equality and brotherhood of man. That is the professed end of the communistic state. But while proclaiming equality and brotherhood of man as its end, the communistic state makes the individual lose his entity completely. Brotherhood and equality are so emphasised that the uniqueness of the individual vanishes from view. The ideals of equality and brotherhood have, in a way, made regimentation easy in everything. And where the ideals have failed in their appeal, undiluted force leading to complete liquidation of protesting or opposing elements has achieved the end. Nevertheless,

people feel bewitched when they are told that all are equal and all are brothers, because all are comrades-in-arms against the capitalist and the bourgeois. In that agreeable manner the twin ideal of equality and brotherhood of man is sought to be realized. The regimentation thus insidiously introduced completes the levelling process and wipes out the individual.

DEMOCRATIC VIEW. Democracy however postulates a different end for the state. It takes its stand on the uniqueness of the individual, and attaches greater significance to individual liberty than to equality and fraternity of man. That is why it guarantees a number of inalienable rights to the individual. The individual is allowed complete freedom to develop his personality, consistent with the well-being of all. He owns property; he is allowed a large measure of initiative and enterprise in matters economic, industrial and vocational; his views are respected; and he can actively participate in the exercise of soverign power. Thus it is harmony of individual liberty and the common good of the community that the Democratic state envisages as its end. At the same time what the individual well-being and common good should or should not be, is left to be decided by the free choice of the individual. Indeed, Democracy starts with the assumption, that "man is a moral agent, because he possesses a free will—a will to freely determine his own good". That is the justification of the end which Democracy keeps before it. Unlike Communism it eschews force or coercion as a technique to realize its end. It depends upon consent of the individual, upon persuasion rather than coercion. Hence in its methods, that is, of government, it welcomes criticism. In parliaments it bids respect to the opinion of the opposition. They are installed in a position of prestige like those in power. It does not seek to liquidate them as the Communists do. It taxes unearned incomes and excess profits in order that benefits of wealth may be evenly distributed in society. By labour legislation and humanitarian activities it undertakes the uplift of the masses. In this way the Democratic state seeks to harmonise the individual liberty with national well-being, complete develop-

ment of the individual with the progress of the nation. Thus it is the balancing of the individual good and the national well-being envisaged as the end of Democracy that constitutes the strength of Democracy.

PART II

POLITICAL INSTITUTIONS

Chapter XI

THE SEPARATION AND DIVISION OF POWERS

WE HAVE in the first part of this book discussed the theory of the state, political concepts, and the principles of government. In this discussion we have viewed the functions of the state in relation to the individual. That, we have explained, is fundamental to the existence of the state. But the functions of the state are performed by the government. How they are performed depends upon how the government is organized. In this part therefore we shall study the organization of the government.

SEPARATION OF POWERS AND DIVISION OF POWERS. In the early stages of the evolution of the state the functions of government were very few. They were limited to the collection of taxes, to war and defence. Making of laws and dispensation of justice were often left to the parochial and religious agencies, to the patriarchs, feudal lords, or the king. All these were done in an arbitrary manner, or in a manner that conformed generally to the customs and usage of the people. As the states developed, their functions increased. Governmental machinery became well organized and clearly defined. In modern states the functions of government are broadly divided into the legislative, executive and judicial functions, and they are undertaken by three distinct organs of government. The legislative function consists in the making of laws, the executive in the carrying out of these laws, and the judicial, in the application of the laws to particular cases. It is easy to understand that the work of a legislator is different from that of a magistrate, and of a magistrate from that of a judge. In theory these functions may seem quite separate, but in actual practice they cannot be so, and a watertight demarcation cannot be made between

them. "Executive officials must exercise wide discretionary powers in administering law, and must deal with questions concerning which no law exists; judges in their decisions often create new law as well as administer existing law." Further, states differ in their scheme to separate these departments or to subordinate one department to another, so that fundamental differences result in organization.

But besides the separation of governmental organs according to their functions, they are also separated according to the areas over which they have jurisdiction. Hence central and local governments, and their further subdivisions into colonial, commonwealth, district, rural and urban units are formed. But generally the former distinction, based on the functions of government, is known as the separation of powers, and the latter distinction, based on territorial units of government is known as distribution or division of powers.

THEORY OF SEPARATION OF POWERS. The theory of separation of powers may be briefly stated as follows. The functions of government are legislative, executive and judicial. These functions should be performed by distinct agencies of government consisting of different bodies of persons. Each department should be limited to its own sphere of action and should be free from interference from other departments of government, and be supreme within its own sphere.

But the classification of the powers of government into legislative, executive, and judicial is not universally accepted. It is contended that the powers of government consist in firstly, the formulation and expression of the will of the state, and secondly, the execution of the will thus expressed. The first takes the form of legislation, both in regard to the making of constitution and of ordinary law. The second is concerned with giving effect to the law. From this point of view administration of justice forms a part of the executive power. Thus the executive power would comprise, (1) activities which are executive in the larger sense, or which concern the supervision, direction and control, (2) activities which are administrative, or which concern the actual mechanical or technical

work involved in carrying on the executive functions of government, and (3) activities which are judicial or which concern the interpretation and application of law to concrete cases. Generally the French writers regard the judicial power to be a phase of the executive power. Therefore the theory of separation of powers has a significance in France, very different from that in England and the United States.

The traditional theory that the powers of government can be classified under the legislative, executive and judicial has also been questioned on the ground that certain powers of government have been left out. Prof. Dealey pointed out that the powers of government fall into five categories, viz., deliberative, legislative, executive, administrative, and judicial. Prof. Willoughby adds electorate to the categories, and explains that in countries like the U.S.A., where democracy has developed more than anywhere else, and where the initiative and referendum play a very important role in the determination of public policies, the electorate should be regarded as "an integral part of the machinery of government" or "a distinct branch of government". According to him administrative power is different from the executive, because while the former pertains to the technical details of departmental work and the actual carrying out of orders, the latter is concerned with the making of decisions, determination of policies, and general superintendence, direction and control.

But these views of Prof. Willoughby tend to create confusion. The electorate cannot be regarded as an "integral part of the machinery of government", or "distinct branch of Government"; for, that would wipe out the distinction between political sovereignty and legal sovereignty. The electorate as the political sovereign is the creator of government or the legal sovereign. It may, under certain circumstances, express its will directly as through the initiative or referendum, but it cannot constitute in itself as a branch of government for formulation of policies or administration of the state. Again, the distinction between the executive and administrative functions of government may be proper and logical, but to

regard them as two distinct branches of government exercising powers that are different in nature is to strain logic a bit too far. In all governments administrative and executive powers are entrusted to the same organ or department, because their functions and activities overlap and would mean duplication if separated. Thus it is best for our purpose to adopt the traditional theory of classifying the powers of government as legislative, executive, and judicial.

HISTORY OF THE THEORY OF SEPARATION OF POWERS. The origin of this theory can be traced to the writings of Aristotle. Referring to the departments of government, Aristotle said that "the first of these is the public assembly; the second, the officers of the state . . .; the third, the judicial department." Polybius in the sixth chapter of his history of Rome also referred to the balanced powers entrusted to the Senate, the Consuls, and the Tribunes in the constitution of Rome. Polybius wrote that the excellence of the organization of the Roman Republic was due to the system of constitutional checks and balances provided. In the Byzantine empire a clear-cut distinction was made between the military and civil authorities of government. After the decline of monarchical despotism and emergence of the broad principles of popular sovereignty as a result of the English Revolution of 1688, the principle of separation of powers assumed a more definite form.

Montesquieu in his *Spirit of the Laws* (1848) defined the theory with reference to the British constitution. He thought that the liberty of the English people depended upon the principle of separation of powers, which characterised their government. "In every government" he wrote "there are three sorts of power: the legislative, the executive in respect to things dependent on the law of nations; and the executive in regard to matters that depend on the civil law. By virtue of the first, the prince or magistrate enacts temporary or perpetual laws, and amends or abrogates those that have been already enacted. By the second, he makes peace or war, sends or receives embassies, establishes the public security, and

provides against invasions. By the third, he punishes criminals or determines disputes that arise between individuals. . . . When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty, because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.

"Again there is no liberty, if the judiciary be not separated from the legislative and the executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for the judge would then be the legislator. Were it joined to the executive power, the judge might behave with violence and oppression. There would be an end of everything, were the same man, or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying causes of individuals."[1]

The views of Montesquieu in regard to organization of government are also supported by the famous English jurist, Blackstone. "Whenever the right of making and enforcing the law is vested in the same man or one and the same body of men there can be no public liberty. The magistrate may enact tyrannical laws and execute them in a tyrannical manner since he is possessed, in his quality of dispenser of justice, with all the power which he as legislator thinks proper to give himself. . . . Were it (the judicial power) joined with the legislative, the life, liberty and property of the subject would be in the hands of arbitrary judges whose decisions would be regulated only by their opinions, and not by any fundamental principles of law, which though legislators may depart from, yet judges are bound to observe. Were it joined with the executive this union might be an overbalance of the legislative."

INFLUENCE OF THE THEORY. The theory with its sound logic made a strong appeal to the peoples who suffered from any kind of tyranny. Though the separation of depart-

[1] *Esprit des Lois*, Bk. xi, Ch. vi.

ments which Montesquieu extolled did not actually exist in England, people imagined that the liberty the Englishmen enjoyed, was due to that. It became an article of faith with the political writers of the 18th century, and influenced the political thought of that and subsequent centuries. The point which was highlighted about the British constitution at the time was that there was a balance of power between the king and the two Houses of Parliament, no one of the three being supreme over the others; while the judiciary was to a large extent independent of all of them. We see its influence on the Massachusetts constitution of 1780. "In the government of this commonwealth", it says, "the legislative department shall never exercise the executive and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end it may be a government of laws, and not of men." Seven years later, in 1787 the convention that framed the federal constitution of the U.S.A. was deeply influenced by the theory, and embodied it, in a somewhat modified form, in the new constitution. In the Federalist, which contains the essays written in defence of the constitution by Hamilton, Madison and Jay, all Presidents of the U.S.A., it is maintained that "the accumulation of all powers, legislative, executive and judicial, in the same hands, whether of a few or many, and whether hereditary, self appointed or elective, may be justly pronounced the very definition of tyranny." Later on when the French Revolution broke out in 1789 in France the leaders of the Revolution started drawing up a constitution on the assumption that "every society in which the separation of powers is not determined has no constitution." Consequently their constitution had a king with no initiative and limited veto, a legislature which could not be dissolved by the head of the executive, an executive that did not sit in the legislature, and a judiciary with elected judges. In 1795 when they amended the constitution they substituted a plural executive, the Directory in the place of the king, and since the Directory was elected by the legislature it meant modification of the principle of separation of powers.

ADOPTION OF THE THEORY BY EXISTING GOVERNMENTS. Montesquieu's observations about the British constitution were not correct. In his days the Cabinet system had not fully developed. In the 19th century, after the Cabinet fully developed, the legislative and executive functions were concentrated in the same body of persons. The Cabinet came to have, as it now has, full control of the executive government. The members of the Cabinet are members of the legislature, i.e., British Parliament, to which they are collectively responsible. Should they lose the confidence of the House of Commons they have to resign. As heads of executive government they direct legislation also. The House of Lords, the upper house of the British Parliament, "is still in fact as well as in form the supreme court of appeal in England". Nine judicial members known as Lords of Appeal in Ordinary sit in it as life-peers only by virtue of their office. The Lord Chancellor who is a member of the Cabinet is also the President of the House of Lords, of the Court of Appeal, of the High Court of Justice, and of the Chancery Division of the High Court. He is also a member of the Judicial Committee of the Privy Council. These facts go to show how far the separation of powers has been adopted in the organization of the British government.

In the United States where the theory of separation of powers was deliberately adopted, considerable modification has been introduced in its application to the federal government. The executive is not without a share in legislation. The President has a partial veto over acts passed by the legislature, and initiative in legislation by means of presidential messages. Nor is the legislature without a share in the executive government, as is seen in the ratification by the Senate of treaties and appointments. The judges of the Supreme Court are appointed by the head of the executive, i.e., the President; but the Supreme Court has the power to determine the constitutionality or otherwise of the laws passed by the legislature. Further, the existence of the party system has helped to modify the rigidity of separation of powers. The party acts as a bond between the legislature and the executive

government. "Whenever the executive and the majority in the Houses of Congress are of the same political party (as was continuously the case, for instance, between the years 1895 and 1911) they are under the guidance of common councils, and are united in the pursuit of the same ends. . . . In the state governments the separation of powers is more nearly complete. The separate election by the people of the governors and other executive officers, the legislature and the judges, is the prevalent constitutional arrangement. The partial veto power given to the governor in nearly all the states of the Union, and the governor's right of sending messages to the legislature, are a departure from the rigidity of the doctrine. In all the states, too, the courts have cognizance of the official acts of the members of the government."

Nor is there a separation of powers observed in the parliamentary government of the Indian Union. The President, who is the head of the executive, is elected by an electoral college consisting of the elected members of the state legislatures and Union Parliament. Cabinet ministers who carry on the government as executive heads of departments are members of the House of the People, collectively responsible to it, and go out of office when they cease to enjoy the confidence of the house. The Union Supreme Court has the power of pronouncing upon the validity or otherwise of the acts of the legislature and the executive. The organisation follows the British pattern of parliamentary or responsible government.

France also has a parliamentary system of government, with a Cabinet of ministers who are at once executive heads of departments and members of the National Assembly. They are also responsible to the National Assembly and quit office when they cease to enjoy its confidence. The President who is a titular head of the executive is elected by the joint ballot of both the houses of the legislature. He has no veto on legislation, but he is authorized to demand a reconsideration of any measure by the Houses.

Thus it will be seen that in actual organization of government, the theory of separation of powers is modified to a considerable extent. That is bound to be, because there is an

organic unity in the functions of government, and it is impossible to attempt a complete demarcation between them. A rigid separation of powers would lead to a sort of isolation of the different branches of government, and there would be little harmony and cooperation which would impede the smooth running of government. Political practice throughout the world demonstrates the absurdity of absolute separation of powers. Even if a legislature, a judiciary and an executive were separately elected or otherwise appointed by the people the question will still arise as to what should be done if they misuse their power. Apart from that, the law which is enforced by the executive and applied by the law courts would still have to be made by the legislature. This runs counter to the principle of the separation of powers.

Besides, the position of the judiciary in modern states though made permanent and independent of the body that selects them, whether it be the electorate, legislature or executive, demonstrates the futility of the theory. "Except in the United States, where the Supreme Court is established by the Constitution, courts may be created or destroyed by legislatures, and the influence direct or indirect, of those who select the judges remains. Besides, in all states, legislatures and executive officials exercise functions that are judicial in nature, and the courts share in creating and executing law. Legislatures not only create the law that courts apply, but in deciding upon the qualifications of their members, and in serving as courts of impeachments, as in France and the United States, or as final courts of appeal, as in England, they exercise powers properly judicial. The executive in its power of pardon and in deciding many disputes arising in the course of administration, also shares in the judicial authority."[1]

ADMINISTRATIVE LAW. But the control of the judiciary over executive officials has had a different application in Europe from that obtaining in England and the United States. In these latter states officers of the government, acting in their

[1] Gettell—*Introduction to Political Science*, p. 225.

official capacity, are subject to the jurisdiction of the ordinary courts almost to the same degree as private citizens; and their individual acts except when of a political or contractual nature may, in many cases, be taken cognizance of by the courts. On the continent, however, and especially in France, administrative officials enjoy an advantage over the common citizens in respect of their official acts. Their acts, performed in an official capacity, can be reviewed by special tribunals known as administrative courts, organized differently from the ordinary courts of law, and falling outside the jurisdiction of regular courts of law. Such a system professes to rest on the doctrine of separation of powers, in-as-much as it seeks to protect the executive from the judiciary. The protection, however, is afforded at the expense of the individual citizen. Its practical effect is that the hands of the executive are strengthened and individual liberty is sacrificed. It is pointed out in justification that if the executive officers are not thus protected they will be punished even when they carry out their duty or when they refuse to do so.

CRITICISM OF THE THEORY. Stated by Montesquieu and Blackstone as a universal principle the theory has certain limitations, and cannot be universally applicable without modifications. It is not correct to maintain that public liberty can be safeguarded only if there is the separation of powers, and that there is no liberty if the executive and legislature are in the same hands. The example of Great Britain amply proves this. Though Montesquieu's theory cannot have a universal and rigid application, separation of powers to a certain extent is indispensable for all governments that claim to exist for popular liberty. Besides, in government, as in all highly developed organizations, a clear differentiation of functions and division of labour are essential for efficiency. It is essential that legislative, executive and judicial functions of government should, in general, be exercised by separate organs. But any attempt at complete separation is both irrational and impracticable. Government which has an organic unity cannot be divided into watertight compartments.

And, as we have seen, the spheres of departments of government overlap and each organ participates in the duties of the others, the same organ at different times exercising legislative, executive and judicial powers. "In a democratic state concentration of authority in the hands of the organ most directly representing the people may secure greater liberty than divided powers granted to independent and irresponsible organs. In fact, a pure democracy presupposes complete concentration of all authority in the hands of the electorate, and checks and balances usually secure a considerable degree of minority control."[1]

In considering the extent to which the principle of separation of powers can be applied, one thing that must be borne in mind is how best harmony in government can be secured. Government as the legal organization of the state has a two-fold function to perform; one, the formulation of the states' will, and two, the execution of that will. All states must provide some means of securing unity of action among the various organs, in order that these two functions be best carried out. The system of parliamentary government in which the executive is legally subordinated to legislature has proved efficient in some states and the United Kingdom is a conspicuous example. The English writers idolize this system because it secures harmony in government and prompt response of the government to public opinion. In the United States, where the separation of powers, has been pushed to an extreme, dangerous to the unity in governmental action, political parties have arisen, securing that unity among the departments of government. How far the one system succeeds or fails in a particular government depends largely upon the political traditions and existing conditions in each state.

CONCLUDING OBSERVATIONS. We may conclude our study of the separation of powers by the following observations of Prof. Gettell. "There must,... be harmony between the expression and execution of the state's will; and in democratic

[1] Gettell—*Introduction to Political Science,* p. 228.

states the organs that express that will, or make law, must have some control over the organs, that execute such will or law. This control may be found either in the formal government or outside, in the political parties. If, however, such control is extended beyond the limit needed to secure orderly and harmonious government, administration becomes inefficient and expression of the real will of the state is made difficult. Within the general control exercised by legislature and political parties, sound policy demands a sphere of independent action for executive, and especially for judicial officials. Such is the general theory of the separation of powers in present political thought."[1] Thus like all theories it has its limitations, and its highest merit lies in the fact that it emphasises demarcation of governmental functions and their performance by distinct bodies of men, enjoying fair measures of independent action and without impairing the integral unity of government.

DIVISION OF POWERS. As has been already pointed out separation of powers involves a distinction between the functions of government as regards the formulation and execution of the will of the state. Division of powers however refers to a distinction between areas of authority based upon the territorial units of a state. On this basis we have a division of the areas of authority into central and local, federal and commonwealth governments. It is on this basis that Unitary and Federal governments are also distinguished. "In unitary governments all the local units are creatures of national government, and their existence and their powers may be modified or destroyed at its pleasure. In federations the component commonwealths are created and their powers outlined by the constitution of the state and neither federal government nor commonwealth governments may legally modify, destroy or encroach upon the other. Within these commonwealths, however, are several degrees of local units, legally subordinate to their respective commonwealths, being

[1] Gettell—*Introduction to Political Science*, pp. 230-31.

created either by their constitutions or by their legislatures. Every state thus possesses a central or national government; federal states have commonwealth governments dividing with the central government the fundamental authority of the state; and all states have a series of local governments exercising powers delegated to them by the superior government that creates them."[1]

The powers actually possessed by the different units vary according to the nature and form of the state. In a federal state the central government invariably controls foreign relations, war and peace, questions of policy, currency, communication, finance etc. The commonwealths or federating units are concerned with the maintenance of law and order, dealings among the citizens, idividual rights and liberty, public health and sanitation, education, property etc. Below these are smaller units still, divisions and subdivisions of the commonwealths, the administrative districts which look after the public peace, transport, municipal services, and, within prescribed limits, civil and criminal law and such other matters. Besides these there are municipal corporations and rural and urban councils which enjoy certain powers of independent action delegated to them. They constitute what is known as local self-government. Their existence is essential because modern democracies are based upon the principle of local self-government, which postulates that local units should have a fair measure of independence in the management of their own affairs.

It is a problem of public administration as to how these units of local self-government could be best coordinated into a system that would work under the central control. Central control is necessary for purposes of unity and efficiency. The local units are not merely concerned with the management of local affairs, they are also administration areas under bigger units and act as their agents. Therefore local independence has to be harmonized with central control in order that the spirit of popular initiative and self-government is developed

[1] Gettell—*Introduction to Political Science*, pp. 230-31.

side by side with governmental unity and national liberty. To achieve this object two ways have been devised, either that "the central government may control legislation leaving administration in the hands of local officials, or the Central government may delegate considerable legislative authority to local governments, while retaining a direct supervision over administration." The first, that is, legislative centralization and administrative decentralization prevails in the United Kingdom and the United States. The second, that is, legislative decentralization and administrative centralization obtains in countries like France. In India we tend to follow the British and American model.

Chapter XII

THE ELECTORATE AND THE SYSTEM OF REPRESENTATION

COMPOSITION OF THE ELECTORATE. In the democracies of today the people as a whole cannot govern. They elect their representatives, who form and carry on the government. It is however not the entire mass of people, comprising men, women and children, who have the right to elect their representatives. In the states of the world this right is given to some specific portion of the population. It may include all adults both male and female, or only those who possess certain qualifications, like property, education etc. But all those who have the right to vote, or the right of franchise are known as the electorate. In the last analysis sovereignty rests with the electorate, and it is known as the political sovereign. It has the ultimate authority to determine the form and functions of government. The constitution embodies its will and the government is formed and run by its mandate. It elects its representatives who actually form the government. They constitute the legislature, and through legislature, the entire machinery of government is run, directed and controlled. In certain countries besides electing representatives for the legislature, the electorate also elects administrative and judicial officers like magistrates and judges. Thus in modern democracies the electorate occupies a prominent position, because it is the ultimate sovereign and is responsible for the organization and day-to-day functioning of government. Before we study the structure of government, we have to understand the composition and character of the body that is the maker and master of government.

The electorate is the body of active citizens. Though it may at any time or in any manner exercise governing authority, in actual practice it does not. Actually authority is exercised by government. And to the extent that the control of the

electorate over the entire government is effective and constant, it becomes an important governmental factor. In a pure democracy the electorate would coincide with the entire body of citizens and exercise directly all governmental powers. But that is not possible under modern conditions. The degree of democracy or popular rule, therefore, depends upon three things, viz., who are allowed to vote, what limitations are placed by a state upon its body of voters or electorate, and what relations exist between the electorate and the government. Generally spaking adult franchise is the rule of all modern democracies and the electorate possesses a controlling authority over government.

HISTORY OF REPRESENTATIVE SYSTEM. "The right of the general body of the people to vote for representatives is the corner stone of the free institutions of Great Britain and America. The origin of this representative government lies hidden at the very beginning of Anglo-Saxon institutions. In Saxon England we find every township sending up an elected reeve, and four men to represent it in the court or general meeting of the shire. It is presumed that in such early elections all free men had a part. But at the very beginning of parliamentary government in England the right to vote tended to restrict itself to owners of land. This was only natural in a country like England, in the fifteenth century, where wealth, social standing and ownership of land were almost identical terms. A statute of Henry VI (1430) limited the right to vote in county elections to residents possessing a freehold worth forty shillings a year. The value of money having changed as between the fifteenth century and the opening of the twentieth in a ratio of at least one to fifteen, this means a quite high property qualification. Although the clause requiring residence fell into disuse, this statute governed the franchise in the English counties for four hundred years. . . .

"The property owner was viewed as having a stake in the communuity, and his vote was regarded as the consequence, not of this personal citizenship but of his property. In the

American states in the early years of their independence this theory was prevalent. The suffrage, and with it the right to be elected, rested on quite restrictive property qualifications. Even in Revolutionary France the first constitution (1791) included among its 'active citizens' only those who paid annually a direct tax equal to at least the value of three days' labour."[1]

As a result of the Industrial Revolution and Napoleonic wars the first reforms in the system of franchise of England were introduced in 1832. A wholesale redistribution of seats was accomplished. The right to vote in the counties was extended from those who owned freeholds to those who held property on lease, and to tenants whose holdings were of the clear annual value of fifty pounds. This meant broadening of the electorate, which now included the middle and well-to-do classes. In 1867 the electorate was further extended to include in the boroughs all householders, and every lodger whose lodgings cost him ten pounds annually, and in the counties every leaseholder, whose holding was of the annual value of five pounds, and every householder whose rent was not less than twelve pounds a year. The system of franchise was further liberalised in 1884, and the most far-reaching reforms, were introduced in 1918 when all special qualifications like ownership of freehold etc. were swept away and the principle of woman suffrage was recognised. In 1929 the women were put on a par with men, and a full scale adult suffrage was established in England.

In the United States "the electoral suffrage is left by the Federal constitution to the States. In them it was at first limited to citizens possessed of some property, often freehold land or a house, but in the period of the great democratic wave which passed over the country between 1820 and 1840 it was almost everywhere extended to all adult men; and since 1869 when Wyoming (then a territory) gave it to women, many states have followed that example. In 1911 Congress proposed an amendment to the constitution granting equal

[1] Leacock—*Elements of Political Science*, pp. 209-10.

suffrage everywhere to women, and this was ratified by the requisite number of State Legislatures in 1920."[1] With that adult franchise was established in the United States, and the electorate coincided with the entire body of citizens. In India with the establishment of universal suffrage under the aegis of the Republican constitution of 1950 the electorate also coincided with the body of citizens.

FRANCHISE QUALIFICATIONS. In the modern democracies of the world the electorate comprises a part of the entire population, reaching as high as three-fifths in the more liberal states. In several states however where universal suffrage obtains, as in India, almost one half of the population are voters. The exclusion of a part of the population is due to certain limitations imposed for purposes of voting. All states agree that those who are called upon to vote should have attained certain maturity necessary for political judgment. They have therefore adopted an age limit, and it is almost everywhere fixed at twenty-one. This qualification alone removes from the electorate almost half of the entire population.

WOMAN FRANCHISE. For a long time women were debarred from voting. That is because political authority is closely associated with military power and power of coercion, and these were considered outside the proper sphere of women. Besides, women were, till the 20th century, legally and economically dependent upon men. In countries like England they were even excluded from universities. During the second half of the 19th century some of the great thinkers of England pleaded for woman franchise. John Stuart Mill wrote that "women require it (Franchise) more than men, since, being physically weaker, they are more dependent on law and society for protection." It was argued that the admission of women to a share in the management of public affairs would be conducive to the common good by introducing into

[1] Bryce—*Modern Democracies*, Vol. II, p. 50.

political life a purifying, ennobling and refining influence. But it was not till the conditions changed after World War I that England granted suffrage to women in 1918. The United States followed suit, and by the nineteenth amendment, full suffrage rights were extended to women in 1920. In almost all the modern states sex is no disqualification today. In India women have the same right to vote as men, but their social and economic emancipation is not yet complete. And until that is secured woman franchise will not be a practical proposition.

LITERARY AND TAX-PAYING QUALIFICATIONS. Property as a qualification for franchise, formerly universal, has been now abolished practically everywhere. Only a small poll tax remains as a qualification in some of the commonwealths of the United States; and in England certain restrictions as to the value of premises owned, leased or occupied still remain. In India payment of taxes or ownership of property in any form is not necessary for voting.

Like the property-owning and tax-paying conditions, literacy has, for a long time, been adopted as a condition for the right of franchise. In the United States ability to read and write had been insisted upon for many years in the states of Connecticut, Massachusetts, New Hampshire, Maine, Delaware, North Dakota, Wyoming, California and Washington. Until 1912 in Italy all those who could not read and write and did not pay a small tax were debarred from voting. According to an old law, graduates of universities were voters in England. In India till independence, educational qualification was maintained for voting.

MILL ON LITERARY AND TAX-PAYING QUALIFICATIONS. It is interesting in this connection to consider the views of John Stuart Mill who thought that literacy and payment of taxes must be pre-requisites of the right of franchise. Those who are ultimately responsible for the making of laws and functioning of government must at least have an elementary knowledge of human achievement on this

earth. And those who vote taxes should be elected by those who pay taxes. "I regard it", he wrote, "as wholly inadmissible that any person should participate in suffrage without being able to read and write, and, I will add, perform the common operations of arithmetic. . . . No one but those in whom *a priori* theory has silenced common sense will maintain that power over others and over the whole community should be imparted to people who have not acquired the commonest and most essential requisites of taking care of themselves. . . . It would be eminently desirable that other things besides reading, writing and arithmetic should be made necessary to the suffrage; that some knowledge of the conformation of the earth, its natural and political divisions, the elements of general history and of the history and institutions of their own country, could be required of all electors." But if literacy is made a qualification for voting, the state should provide facilities to acquire literacy free of cost to the people. Similarly he thought that "the assembly which votes the taxes, either general or local, should be elected exclusively by those who pay something towards the taxes imposed. Those who pay no taxes, disposing by their votes of other people's money have every motive to be lavish and none to economize. . . . The voting of taxes by those who do not themselves contribute is a violation of the fundamental principle of free government; representation should be coextensive with taxation."

CRITICISM OF MILL'S VIEWS. These ideas of Mill are untenable under modern conditions. Literacy does not necessarily add to one's capacity for voting intelligently, nor does the want of it detract from that capacity. People are generally influenced by parties and their propaganda. It is difficult even for a highly educated man to be conversant with all the aspects of public affairs and resist party propaganda. It certainly helps to be literate and the modern democracies which stand forth as welfare states have provided facilities to spread literacy among the people free of cost. But to make literacy a qualification for voting is not practical politics. So is the tax-paying qualification. The state is not a joint-stock

company so that those who contribute to the stock have a voice in its operations, and those who do not contribute, are debarred from it. But to proceed on such a theory would, as in the case of the educational test, lead to manifest injustice in many cases.

While religion as a qualification for the right of franchise has been practically discarded, the constitutions of several commonwealths of the United States provide that no person shall vote unless he is a believer in God. Again some of these commonwealths have recently adopted literacy qualification for reasons that are genuine while others have adopted it to disfranchise the Negro. The most important qualification for franchise today is citizenship. Normally every citizen of a state has the right to vote. But there are certain disqualifications. Without exception criminals who have been convicted, idiots, lunatics, and insolvents are not allowed to vote. That apart citizenship today has become a somewhat complicated matter. People move from one state to another frequently and freely. Aliens come and reside in a country for a considerable period. In such cases naturalization is essential to acquire citizenship rights. But each state has its own laws of naturalization, and that causes complications.

VOTE BY BALLOT. The body of citizens who enjoy the right of franchise is called the electorate. It determines in the last analysis the form of government of the state, and chooses those who guide and direct its affairs. These functions of the electorate are exercised through the process called voting. The way by which it is exercised, that is, votes are cast or recorded is called the ballot, and the meeting at which it is done is known as the election. In all democratic countries election is by ballot, i.e. secret voting. The procedure can be best explained by the provisions of the English Ballot Act of 1872, adopted everywhere. "In case of a poll at an election the votes shall be given by ballot. The ballot of each voter shall consist of a paper showing the names and description of the candidates. Each ballot paper shall have a number printed on the back and shall have attached a counterfoil with

the same number printed on the face. At the time of voting, the ballot paper shall be marked on both sides with an official mark, and delivered to the voter within the polling station, and the number of such voter on the register of voters shall be marked on the counterfoil, and the voter having secretly marked his vote on the paper, and folded it up so as to conceal his vote, shall place it in a closed box in the presence of the officer presiding at the polling station. After the close of the poll the ballot boxes shall be sealed up, so as to prevent the introduction of additional ballot papers, and shall be taken charge of by the returning officer, and that officer shall, in the presence of such agent, if any, of the candidates as may be in attendance, open the ballot boxes and ascertain the result of the poll by counting the votes given to each candidate, and shall forthwith declare to be elected the candidates or candidate, to whom the majority of votes have been given."

ELECTORAL DISTRICT OR CONSTITUENCIES. For purposes of election, the electorate is divided into small units. Each unit is known as an electoral district or constituency. There is a good deal of controversy about the formation of electoral districts, that is, how the citizens should be grouped. Should they be grouped on the basis of (*a*) vocations, (*b*) social stratification, or (*c*) population? In favour of vocational grouping it has been argued that men come together and cooperate for the pursuit of certain basic interests. An engineer or a doctor finds that he can understand and cooperate better with men of the same vocations, because they have the same interest in life. Their approach to the political issues and needs of the society is likely to be identical. Thus they should be grouped together for purposes of election. On the other hand it has been pointed out that vocations are so varied that if the voters are bunched together on that basis there would be an enormous variety of electoral districts, and the strength of their population or constituents will vary enormously. There will be no uniformity in the size of the constituencies. There may be also cross-sections in them, such as in rural areas a farmer may be a carpenter or black-

smith or a weaver, and in urban areas, a publisher may be a doctor or engineer. When elected there will not only be numerous groups in the legislature but there may be a few groups far outnumbering other groups. For example the lawyers and the doctors may far outnumber others. That will make for difficulties in the legislation and government. Electoral districts formed on the basis of social stratification like the caste and community, inherited wealth and land, help to perpetuate social distinction and privilege, which runs counter to the spirit of democracy. The most universal practice is to form electoral districts on the basis of population and on geographical basis. The country is divided into compact geographical areas containing equal number of citizens. They are known as constituencies.

SINGLE-MEMBER AND MULTI-MEMBER CONSTITUENCIES. In forming constituencies two methods are generally adopted. One is that the entire country is divided into as many electoral districts as there are representatives to be chosen. If, for example, 500 representatives are to be chosen, the country will have 500 electoral districts, each sending one representative. That is one method. The other is to have less number of electoral districts, so that each district sends more than one representative. The former is known as the single-member constituency and the latter as the multi-member constituency. To mark the multi-member constituency system, Proportional Representation is adopted. Most of the states of the world have single-member constituencies. In 1919 some of the European states, and particularly France, adopted multi-member constituencies with Proportional Representation. But the result does not seem to have been satisfactory; so that in 1927 France went back to the single-member system. It again reverted to proportional representation in 1946. India has both single-member and multi-member constituencies; whereas the United Kingdom and the United States have single-member constituencies. The single-member and multi-member systems are also known as the single district and general ticket systems respectively. Each

has its own advantages and disadvantages, and it depends upon a particular community to adopt the one or the other to suit its needs.

ADVANTAGES AND DISADVANTAGES. There are many advantages of the single-member constituency. It is economical and simple to work. There is also a fair chance for the minorities to get representation. The electoral districts sending one member are invariably small, smaller than those sending more than one member. Naturally the member elected is better known to the constituents, and knows the needs of his constituents better. He can be more easily contacted, and a lot of good can be done for the constituency. Further, the system helps to secure a balance of interests. Agricultural areas, for example, in highly industrialised countries may secure representation by this system, whereas under the general ticket system urban areas may outvote the rural areas. The single district system thus is likely to secure variety in representation and reflect the will of the people better than the general ticket method. Lastly, it makes for stable majorities in legislatures, and thereby helps to form a strong executive.

As against these advantages the following disadvantages should also be noted. Firstly, election from the small single-member districts can be easily controlled by government; for, the smaller the district, the more easily can government influence sufficient number of voters to elect its candidate. Secondly, the representatives of these districts are influenced by considerations of local interest rather than of national interests, and thus develop a parochial outlook. Thirdly, it tempts the majority party to maintain its strength by so constructing the district that it secures more representation than its due at a general election. "It is effected by so allotting the electoral districts that the adverse voters will be too few everywhere to carry any district. If this is impossible the districts are so contrived as to 'bunch together' the hostile voters, and thus it results that when they do carry a district, they carry it by a needlessly large majority, and so

practically lose a lot of voters."[1] This process is known as gerry-mandering and is widely in vogue in modern politics. Lastly, it leads sometimes to very unhappy results that frustrate the object of representation. Majority parties sometimes are returned to the legislature by voters who form only a minority in the country. For example, in the general elections of India in 1951-52 the Congress Party secured 362 seats out of the 489 elective seats of the House of the People, though only 44.85 per cent of the votes were cast in their favour. In the British elections of 1924 the Conservative Party secured 412 seats out of a total of 615 in the House of Commons, though only 48 per cent of the votes were cast in their favour. This is not democracy, because in the first case 55.15 per cent of the people and in the second case 52 per cent of the people did not want the parties which actually came to rule over them. That is the most serious defect of the single-district method.

PROPORTIONAL REPRESENTATION. Besides that it may so happen that minorities do not get any representation. Suppose at an election 22,000 votes are cast and the candidates belonging to the Congress, the Praja Socialist and the Hindu Maha Sabha parties, secure votes in the following manner: Congress—8000, P.S.P.—7500 and H.M.S. 6500. Naturally the Congress candidate is elected but he has not received the majority of votes since he gets only 8000 out of 22000 votes. The other two parties lose the election even though they are not much behind in popular support. Indeed the election does not reflect the relative strength of the body of voters. And if this prevails over the entire country the minority may go unrepresented or under-represented. To remedy this state of affairs, the system known as the Proportional Representation has been proposed. Its aim is to give representation to every section of the electorate in proportion of its strength.

PROPORTIONAL REPRESENTATION BY SINGLE-TRANSFERABLE VOTE. The scheme most in vogue to

1 Leacock—*Elements of Political Science*, p. 217.

give representation to minorities is known as the Proportional Representation by single transferable vote. It was suggested by Thomas Hare, and is called the Hare System or Hare-Spence System. It is based on multi-member constituencies, each electing not less than three members. No maximum of seats is fixed. The number of votes necessary to elect a candidate known as the "quota", is found by dividing the total number of votes cast by the seats to be filled. The candidates stand on the "general ticket." The elector may vote for one or for a limited number. He has to indicate for a limited number, on the ballot-paper, his choice by writing 1, 2, 3 and so on in order of preference. At the first count only the first choice votes are taken into account. Those who receive the quota or sufficient number of first choice votes are declared elected. Their surplus votes, which would otherwise be wasted, are distributed proportionately among others who figure as second choices on their ballot papers. If these second choices do not fill up the seats vacant, then the third choices are counted and so on till all the seats are filled.

ALTERNATE VOTE. The only objection to this system is that it requires multi-member constituencies. Most countries desire that small areas should be represented, each by sending up one member whom the electors know and who should be chosen by a majority of them. To meet this desire the plan known as the *Alternative Vote* has been suggested. In this the single-member constituency is adopted and the voters are required to indicate their first, second, etc., choices of candidates. One who gets a clear majority of first choice votes is declared elected. Failing such a majority, the lowest candidate is dropped and the second choices on his ballot papers turned into firsts, and so on till one is elected. But even this, on a closer scrutiny does not appear to be very satisfactory.

LIMITED VOTE. Another method for giving representation to minorities is known as the Limited Vote System. In this, multi-member constituencies are adopted. Each voter is allowed a smaller number of votes than there are seats to

fill, and he may not give more than one vote to any candidate. If there are seven seats to fill, each voter will have for example, four votes. The idea is to elect four members from one party, and to give three to the others who may be minority groups. In actual practice fairly large minority groups are calculated to secure representation by this method. But in a three or four-cornered contest it is not likely to help all the groups.

CUMULATIVE VOTE. Unless a minority is negligible, Cumulative Vote System offers a fair chance of representation. It is based on multi-member constituency as in the Limited Vote System. The voter has as many votes as there are seats to fill, and he can cast his votes as he likes. If, for example, there are seven seats to fill, he may give all his seven votes to one, or four votes to one and three votes to another, or one vote to each of the seven candidates. This is helpful to very small minorities in securing their representation, since a few of their voters may combine to cast all their votes in favour of their candidate and he is sure to be elected. In this way minorities sometimes can have their candidates returned at the top of the polls.

LIST SYSTEM. There is a special type of Proportional Representation known as the List System. According to this candidates for election are grouped in lists, adopted by the political parties. Each voter has as many votes as there are seats to fill, but he cannot give more than one vote to a candidate. The votes thus cast are pooled on the basis of the lists. That is to say, the votes cast in favour of the individuals are counted first as votes for the list. The quota of votes is determined as in the Hare System, by dividing the total number of voters by the number of seats to be filled. Then the votes polled by each party are divided by the electoral quota and the quotient determines the seats to be allotted to each party.

THE SECOND BALLOT. The Second Ballot System is another method of securing just representation. It is based

on one-member constituency. If there are only two candidates, then a majority of votes cast in favour of one decides the issue. If there are three or more candidates then at the end of the first polling the one with the smallest number of votes is dropped, and polling starts for the second time, and the procedure, as on the first occasion is repeated. The process goes on till only two out of the whole lot are left, and between them whoever polls the majority of votes is declared elected. The second ballot is not meant to secure proportional representation.

VOCATIONAL REPRESENTATION. Though the system of Proportional Representation removes grievances of minorities organized as political parties, it has been criticised on the ground that it "does not take into account the existence of other large and important groups, economic, social, professional, occupational and the like, which have special interests peculiar to each and which therefore ought to be specially represented in the legislature. Neither the system of representation of political majorities, nor that of political minorities as such is in harmony with modern conditions or the true principle of representation. Both are defective because they rest upon purely geographical and political bases. They should therefore be replaced by a system of professional, class, occupational or functional representation which would disregard political and territorial lines, since the latter, after all, are largely artificial and do not mark off precisely the boundaries which separate the real interests of the various classes of which modern societies are composed."[1] But that would undermine the development of a national outlook, and national interests may be subordinated to the class or group interests. Further, the assumption that one can best represent a constituency or group, if his vocation is the same as that of his electors, does not seem to be sound. A doctor or an engineer for example, cannot, on that assumption truly represent a constituency of farmers, miners, merchants, lawyers etc. Such a system would

[1] Garner—*Political Science and Government*, p. 655.

lead to the fragmentation of localities and legislatures in a manner that would be dangerous to the country. Lastly, as it has been pointed out, that would be inconsistent with the principle of national sovereignty, which is based upon the principle that members of legislative assemblies are chosen to represent the interests of the nation as a whole, and not the special interests of particular classes.

COMMUNAL REPRESENTATION. Communal Representation is also a method by which minorities can secure representation. It is done either by forming separate constituencies in which voters of each community vote separately for the candidates of their own community, e.g., Muslims vote for Muslim candidates, and Christians for Christian candidates; or by reserving seats in a joint electorate. Where seats are reserved voters may vote for candidates of the communities other than their own, but the candidate of the community for whom the seat has been reserved will be elected provided he gets the highest number of votes among the candidates of his own community even though there may be candidates of other communities getting even more votes. Communal representation based on separate electorate was adopted in India in 1909 as a concession to the Muslims by the British. It continued till 1947 when India was partitioned and Pakistan came into existence. The system is disastrous from the point of national unity and development of political institutions. It seeks to promote petty communal interests in preference to the national interests. It creates conflict of ideology and develops a partisan outlook rather than the outlook of a citizen. As the authors of the Report on Indian Constitutional Reforms pointed out it fosters "divided allegiance" to the State. And the division of India into two states was a logical consequence of the communal electorates.

"Unqualified joint electorates are, therefore, the ideal. In a transitional period, i.e., until the minorities learn to have confidence in the reasonableness of the majority, the reservation of seats in a joint electorate may be tried with advantage

as a step in promoting that confidence."[1] But even so it is dangerous, for in politics, once a concession is granted it is claimed as a right and sought to be perpetuated.

[1] Appadorai—*Substance of Politics*, p. 501.

Chapter XIII

THE LEGISLATURE

ROLE OF THE LEGISLATURE. Government consists of three organs, viz., the Legislature, the Executive and the Judiciary. In democratic states the Legislature is composed of the representatives elected by the people. The Legislature thus composed makes laws for the country. And laws made by the Legislature are interpreted and applied to individual cases by the Judiciary, and enforced by the Executive. In parliamentary democracies the Legislature, apart from making laws, performs another important function. It maintains a close supervision over the Executive, and the Executive is made accountable to it for all its actions. Since law is the basis of government, Legislature occupies a pivotal position in the structure of the state. It is through law that individual rights are maintained, internal peace and order are safeguarded, and justice is administered. It is from law that the functionaries of the state derive their power and authority.

In states which have a unitary system of government, the Legislature decides how the power of government should be distributed among the local units and the central body. In all states it controls the finances by determining the modes of raising money, the amount to be raised, and the purpose for which it is to be spent. Broadly the power of regulating the administration is vested in the Legislature. Again in a country like England it can make and amend the constitution, besides making and amending ordinary laws. In parliamentary democracies, it appoints its members to be the heads of executive government and run the administration. Therefore the role of the legislative body must, to some extent, be superior to those of the Executive and the Judiciary.

Originally legislation or law-making was the function of kings and emperors. Their command was law, and they issued commands at pleasure. Sometimes they consulted their

ministers, nobility, or the clergy. It is their autocracy and despotic rule that created a conflict between kings and their peoples. It came to a head in the seventeenth century in England and in the eighteenth century in France. There were revolutions, viz., the Glorious Revolution in England, and the French Revolution in France. Consequently the people took over the power of making law from the king. The people entrusted this power solely to their representatives, duly elected by them. Today in all countries where popular rule is established, whether under the nominal headship of a monarch or otherwise, law-making is the chief function of the representatives of the people, who form the legislative body.

SIZE OF LEGISLATIVE ASSEMBLY. Legislation is the result of deliberation and discussion. For deliberation two heads are better than one, and when it affects the welfare of a nation, two hundred are better than twenty. That is to say, there should be, for purposes of legislation, a fairly large number to represent different points of view and different kinds of interests. Then alone law will be broad-based. It has been already explained in an earlier chapter how and on what basis representatives of the people are chosen. There is no doubt that a legislative body should be composed of a large number of persons representing different shades of political opinion, different sections of the community and various interests. It is difficult however to lay down any principle or rule by which the number of representatives in a legislature should be determined. It varies from country to country according to its size of population and needs. The biggest assembly was that of France in 1789 and it consisted of 1200 members. It was too unwieldy to work. Of the popularly elected legislatures in modern times, the House of the People of India contains 500 members, the House of Representatives of the U.S.A. 435 members, the British House of Commons 640 members, the French National Assembly 618 members, the Soviet Council of the Union of U.S.S.R. 678 members, the National Council of Switzerland 196 members, the House of Assembly of the Union of South Africa 159 members, and the House of Repre-

sentatives of the Commonwealth of Australia 121 members. That gives us an idea of how national assemblies vary in size.

LEGISLATIVE PROCEDURE. It cannot be easy for such large bodies to accomplish the work of actual legislation without adopting definite plans and rules of procedure. Otherwise the members may go on talking endlessly and debating without purpose. That was noticed of the French National Assembly of 1789. "They discuss nothing in their assembly" it was said. "One large half of their time is spent in hallooing and bawling." To avoid this, a sort of restraining device known as the legislative procedure has been adopted by all legislative bodies. It lays down definite rules and methods of doing legislative work, that is, for making laws and conducting deliberations and debates.'' They aim at, as Prof. Leacock put it, "orderly and efficient dispatch of business, the prevention on the one hand, of precipitate and ill considered action, and, on the other, of fruitless prolixity of debate."

When such large bodies meet the danger is that they may not merely go on talking and debating endlessly, but they may also attempt legislation under the impulse of emotion or momentary passion and prejudice. Legislation is a very responsible kind of work. As Woodrow Wilson said it consists in 'interpretation rather than origination.' That is to say the needs and grievances of the people have to be first understood in their proper perspective, and then law has to be made to satisfy the needs and redress the grievances. Passion and prejudice should not be allowed to distort judgment. Nor should emotion be allowed a free play. These lead to precipitate action and hasty legislation. The legislative procedure should be such as to provide for sufficient time in order that the passing emotion and momentary passion may die down, and after cool consideration, legislation is passed. The legislative procedure is therefore necessary for preventing hasty legislation.

(1) THREE READINGS OF BILLS. There is, in all the legislative bodies of modern states, a general uniformity about

the legislative procedure. It consists in a few well-established ways of conducting and disposing of legislative business. The most important is that when a piece of legislation is desired, it has to be presented in the form of a bill, and the bill, before being passed, has to go through three separate 'readings'. That is meant to allow three separate intervals of time in order that the bill receives proper consideration, and is discussed from all points of view. The British House of Commons has the following procedure. "The member who desires to introduce a measure gives notice of his intention to do so. When the motion comes in its order he moves for leave to introduce a bill.... An order of the House is made that the bill be prepared and brought in by the mover, and other members named by him. The bill may then immediately be presented which is done by the member appearing at the bar, whereupon the Speaker calls upon him by name; he calls out 'A bill Sir,' and is desired by the Speaker to bring it up. He brings it to the Table, and delivers it to the Clerk of the House, by whom its title is read aloud. The questions that a bill be now read for the first time and that it be printed, are put without amendment or debate; an order is then made that it be read a second time on a day named." On the day named the bill is again brought, and a vote is taken on the question that the bill be now read a second time. After this, the bill is referred for discussion, amendment and report to one of the many committees of the House. There are several kinds of them for various kinds of work, e.g., Standing Committees, Select Committees, Committees of the whole House and private bill committees. One of these scrutinises the bill clause by clause, and as it is a lengthy process, takes some time. It may take a few days or even a few weeks depending on the importance and length of the bill. After the committee stage is passed a day is fixed for the final consideration of the bill. It is then presented to the House in its revised form, and unless further changes or amendments are introduced, is passed, and submitted for the third and final reading. When the bill has passed its third

reading, it is sent to the upper house—the House of Lords.[1] There it is likelty to be further amended, if it is not a money bill. This is a fairly lengthy process, and is designed to eliminate the element of haste and momentary passion and emotion affecting the legislation.

The Americans follow a more expeditious method of disposing of legislative work. The House of Representatives delegates the work of legislation to a series of standing committees nominated by the Speaker. They are representative of both the great political parties—viz., the Republicans and the Democrats. There are at times as many as sixty standing committees, and some of the most important are the committees on the Ways and Means, on Appropriations, on Banking and Currency, on Commerce, on Claims, Manufacturing, Pensions, etc. After a bill is formally presented, it passes through the first and second readings, which means merely reading of the title by the clerk. Then it is referred to the appropriate committee. It is here that the bill is subjected to a rigorous scrutiny, and as a result, the great majority of bills fall through. Though the committees have no power to negative a bill, yet very often their action is tantamount to producing that result. They can make an adverse report on the bill, amend it beyond recognition, substitute it by another, or simply allow it to lie untouched. This process expedites legislative work but individual initiative is hampered.

In France the National Assembly adopts yet another method. It adopts the committee method, but here committees are formed according to the proportional representation of party groups. Actually the various parties themselves appoint the respective members of the committees, so that all the parties are represented in proportion of their strength on all the committees. This is not a satisfactory method. In France cabinet or responsible system of government prevails. The cabinet guides legislation and sponsors most of the bills. Their bills under this arrangement run the risk of being handed over to

1 For further information see Anson—*Law and Custom of the Constitution*, Part i, Ch. vii, Sec. ii G2.

committees where the opposition may dominate. That often creates unpleasant situations for government.

(II) CLOSURE OF DEBATE. There is one other way of conducting legislative business. That pertains to the need of forcing a closure of the debate. Sometimes members of a legislature make lengthy speeches and talk against time. Legislative work, in consequence, is seriously impeded. In the British House of Commons there was no rule for forcing the closure of a debate. During the second administration of Gladstone (1880-85) the Irish members adopted obstructionist tactics by talking without stop and blocking legislative business. Hence in 1882 a rule of closure was adopted. Today a motion for terminating the debate can be tabled and it is for the Speaker to put it to vote or not. There is also in vogue the method of applying the "guillotine" or closure by compartment to a bill, according to which the House by a resolution may not permit discussion on certain clauses of a bill, or if it permits, limit the time allotted to it. Like the British House of Commons, the American Senate originally had no rule regarding the forcible closure of a debate. In consequence, however, of the obstructionist tactics, similar to those of the Irish members, adopted by six members of the Senate over a bill to permit the arming of merchant vessels, a rule for forcible closure of the debate was adopted in 1917. The rule says that "two days after a written notice by sixteen senators, closure may be applied by a two-thirds vote, each senator being limited to one hour's debate, and no amendment being entertained unless by unanimous consent." Such methods for forcible closure of the debate are almost universally in vogue, and are designed to help dispatch of legislative business.

FORM OF THE LEGISLATURE. It is again from the need for preventing haste and passion, and securing a due amount of caution and deliberation in the work of legislation, that the question arises as to how the legislatures should be formed. Generally, the legislatures consist of two houses, the

upper and the lower. India, France, the United Kingdom, the United States, Canada etc. have two houses, and bi-cameral legislatures are the rule rather than the exception in the world today. Nevertheless, there is a strong section of political thinkers who favour a single chamber or uni-cameral legislature as against a two chamber or bi-cameral legislature. This controversy has obtained for a long time, ever since the days of the French Revolution. Let us examine their views.

BI-CAMERAL LEGISLATURE. "The advantages claimed for a second chamber may be summarised as follows: First it serves as a check upon hasty, rash, and ill-considered legislation. Legislative assemblies are often subject to strong passions and excitement, and are sometimes impatient, impetuous and careless. The function of a second chamber is to restrain such tendencies and to compel careful consideration of legislative projects. In the second place the bi-cameral principle not only serves to protect the legislature against its own errors of haste and impulse, but it affords a protection to the individual against the despotism of a single chamber. The existence of a second chamber is thus a guarantee of liberty as well as to some extent a safeguard against tyranny. There is a natural propensity on the part of legislative bodies to accumulate power into their hands, to absorb the powers of the executive and the judiciary, in short to draw into their grasp, the whole government of the state. The existence of a second chamber . . . doubles the security of the people by requiring the concurrence of two distinct bodies in any scheme of usurpation, or perfidy where otherwise the ambition of a single body would be sufficient. 'The necessity of two chambers' said Bryce, 'is based on the belief that the innate tendency of an assembly to become hateful, tyrannical, and corrupt needs to be checked by the co-existence of another house of equal authority.' A third advantage . . . claimed for the bi-cameral system is that it affords a convenient means of giving representation to special interests or classes in the state. . . . Finally the bi-cameral system affords an opportunity, in countries having the federal form of government, of

giving representation to the units composing the federation. In order to maintain the proper equilibrium between the component members and the federation as a whole, the former ought to be represented in one chamber of the legislature without regard to population; that is, represented as distinct and equal political organizations. This, in fact, is the principle upon which the legislatures of most states having the federal form of government are at present constructed."[1]

UNI-CAMERAL LEGISLATURE. As against these advantages of the bi-cameral system, the opinions in favour of the uni-cameral system may be examined. Most of them suggest that rashness in legislation is today a myth, and representation of special interests except in a federation is mischievous.

Towards the end of the 18th century Abbe Sieyes favoured the single chamber legislature. His argument was that "the law is the will of people; the people cannot at the same time have two different wills on the same subject; therefore, the legislative body which represents the people ought to be essentially one. Where there are two chambers discord and division will be inevitable and the will of the people will be paralysed by inaction." It has also been observed that a single chamber legislature is not particularly exposed to temptation or prone to rash legislation. On account of the lengthy process the legislation has to go through today, and the highly organized work of the parties, that possibility may be ruled out. Before a piece of legislation is introduced it has generally to fall in line with the programme of a party which sponsors it. Then the process of legislation drags on for such a long time that often important bills take years before they pass into acts. The problem, for example, of Home Rule for Ireland was debated in the British Parliament for 30 years before it was passed into law. The reform of the House of Lords, the minimum wage, nationalisation of mines, and similar other matters have been before the British

[1] Garner—*Political Science and Government*, pp. 605-8.

Parliament for a generation by now. Between the Education Act of 1902 and Rt. Hon'ble Fisher's attempt to complete its structure 16 years passed. It took 20 years for the British Parliament to accomplish the federation of Australia, and about seven years to pass the Government of India Act, 1935. These facts clearly indicate that the slow and lengthy process of modern legislation leaves little chance for hasty and rash legislation. Therefore it is not necessary to have two chambers, if the work can be satisfactorily done by one chamber. A second chamber therefore would be a costly luxury. Lastly it has been argued that in any case a second chamber is useless; for, if it agrees with the popular house, it is superfluous, and if it disagrees, it is obnoxious.

COMPARISON OF THE TWO TYPES. Whatever be the strength of these arguments people have begun to feel in recent years that the advantages claimed for the bi-cameral system are not all real. Under modern conditions, as has been pointed out, the advantages of a uni-cameral legislature more than outweigh the disadvantages. This reaction has been noticed in most of the leading democracies of the world, and the consequence is that they have sought to curtail the powers of the second chambers. The initiative was taken by the British Parliament when by the Act of 1911 it virtually took away from the House of Lords its power to defeat bills passed by the House of Commons.

"One of the common arguments in support of the bi-cameral system is that it increases the difficulty of getting measures through the legislature by means of bribery and corruption, or measures which are objectionable upon their intrinsic merits, and for which there is no popular demand or necessity. But those who rely upon this argument overlook the fact that the device works both ways, since it may serve to delay or prevent the enactment of good laws as well as bad ones."[1] It has been also observed that nowadays deliberation, reflection, and a sense of responsibility do not mark the work of

[1] Garner—*Political Science and Government*, p. 611.

legislation, even in a bi-cameral legislature. Sometimes it is rushed through during the last few days of the session, and sometimes most of the representatives are found absent from the house, or sleeping in the retiring rooms, when important bills are being discussed.

COMPOSITION AND TERM OF THE SECOND CHAMBERS. In the legislatures of modern states the popular house known also as the lower house represents the people as a whole. It is composed of the representatives directly elected on the basis of general ticket. The Upper House also known as the second chamber is composed differently in different countries. But generally speaking the composition is based on the principles of hereditary office, appointment, election, or on a combination of these. The British House of Lords stands out prominently among the second chambers of the world inasmuch as its composition is based mainly on the hereditary principle. This principle was adopted in Japan in 1889 for creating the House of Peers which continued till its abolition in 1946. Hereditary principle has been discarded in all the countries of the world today except England. It does not fit in with the present-day concepts of democracy. In England, however, it has played and continues to play an important role because of which it exists there. Otherwise, as Thomas Paine in his Rights of Man wrote "the idea of hereditary legislators is as inconsistent as that of hereditary judges or juries, and as absurd as an hereditary mathematician or an hereditary wise man, and as ridiculous as an hereditary poet-laureate." There are today no hereditary members in the second chambers of France, Switzerland, Denmark, Belgium, Norway, Sweden, India and Italy.

In certain countries of the world the second chambers are composed on the basis neither of hereditary tenure nor of election. In Canada, for example, the Senate is composed of members nominated for life by the summons of the Governor-General. The total number, and the number from each province, are limited. Similarly in Italy before 1947 when it became a democratic republic, the Senate was composed of

the princes of the royal blood, and other members, nominated for life by the king on the advice of the head of the government. The Indian upper house known as the Rajya Sabha or Council of States consists of members who are indirectly elected. The representatives of each state are elected by the elected members of the state legislature, if it is uni-cameral; and by the lower house of the state legislature, if it is bi-cameral. Besides these representatives who are indirectly elected, 12 members are nominated by the President of the Republic to represent art, leterature etc. Thus in India we have both nomination and indirect election for the constitution of the upper house. In France the Council of the Republic which is the upper house is elected by communal and departmental bodies by means of indirect universal suffrage. The Belgian Senate, i.e., the upper house there, is elected partly directly and partly indirectly.

Apart from these there are some upper houses which are directly elected; for example, the Senate of the U.S.A., the Senate of the Commonwealth of Australia, and the Council of States, or, the *Standerath* of Switzerland. But the basis of election differs from that adopted for the lower house. The constituencies are made differently, and instead of a fixed number of population some other basis like a state or federating unit is generally taken as an electoral district. The idea is that the upper house must not be a duplication of the lower house. In a federal state it is necessary to give representation to the federating units as such. The examples are the Senate of the U.S.A. and of Australia. In the U.S.A. each state elects two senators and in Australia, ten senators. Another way of varying the system of election is to adopt direct election for the lower house and indirect election for the upper house. The examples are the Council of States of the Indian Republic, and the Senate of France.

Besides adopting different ways of election, and different electoral districts, the term of office is also made different for the Upper House. For example in India the upper house has a permanent existence with a membership tenure of 9 years and one-third of the members renewed every three

years. The lower house has a fixed tenure of five years unless sooner dissolved. Every five years or earlier, the election of all the members takes place, and that is called a general election. In the United States the Senate has a tenure of six years, and the House of Representatives of two years. There is no provision for its earlier dissolution, but one-third of the Senate is renewed every two years. In France the Council of the Republic, which is the upper house, has a perpetual existence with one-half renewable at a time, while the National Assembly, which is the lower house, has only a five-year term, unless dissolved earlier. "This method of partial renewal is of particular efficacy and importance. It lends a character of permanency and stability to the upper house, which offsets the tendency of the lower one to a too complete change of membership and of sentiment as the result of a general election."[1]

DISTRIBUTION OF POWER BETWEEN THE TWO HOUSES. A distinction is made universally between the two houses not merely in respect of their composition and tenure, but also in respect of their powers. Usually the two houses enjoy equal and co-ordinate powers in matters of legislation. A bill has to originate in either house, and becomes law with the consent of both the houses. Amendments to the bills can be also proposed by either house. For this general practice there are certain exceptions. Firstly, in respect of all bills relating to the raising and spending of money the powers of the upper house in most of the states of the world are limited. The lower house, by virtue of its greater representative character, enjoys almost absolute powers in this matter. "This distinction arose in the English Parliament during the fourteenth century, when the members of the upper house were largely exempt from taxation, and the representatives of those who paid the taxes were naturally regarded as having the power to vote taxes and expenditures. In several other states a similar distinction has been adopted, partly in imitation

[1] Leacock—*Elements of Political Science*, p. 160.

of the English system, partly to avoid danger of deadlock on a question so important as that of revenue and expenditure, and partly because of the idea that the lower house, more directly and proportionately representing the people should be entrusted with this power."[1] In the United Kingdom, the United States and the Indian Republic, the upper house is forbidden to originate bills for raising revenue. In the United States the constitution lays down (Art. 1 G 7) that "all bills for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with amendments as on other bills." The Senate therefore uses its power to amend or reject money bills so freely that it can be said to enjoy a position almost equal with the lower house. In France the procedure is similar to that in the United States, except that the budget is presented by the ministry. An Appropriation Bill must originate in the National Assembly while the Council of the Republic has the power to amend or reject them, but in cases of divergence the National Assembly has the final decision. In the United Kingdom the House of Commons can alone introduce a money bill, and the House of Lords has no power to amend or reject it. In the Indian Republic money bills can be introduced only in the lower house. The upper house has only a suspensive veto of 14 days. At the end of fourteen days, in spite of the veto, the money bills are presented to the President for his assent.

There is, secondly, a disparity in the powers of the two houses in respect of ordinary bills in certain states of the world. In the United Kingdom, if there is a difference of opinion between the House of Lords and the House of Commons, the House of Lords ought at some point (not definitely fixed) to give way; and should the Peers not yield, and the House of Commons continue to enjoy the confidence of the country, it becomes the duty of the Crown, or of its responsible advisers, to create or threaten to create, enough new peers to override the opposition of the House of Lords,

[1] Gettell—*Introduction to Political Science*, pp. 244-5.

and thus restore harmony between the two branches of the legislature. This procedure has been often adopted to overcome the opposition of the Lords, as for example, at the time of the Reform Bill of 1832, Repeal of Corn Laws in 1846, disestablishment of the Irish Church in 1893, and the Finance bill of 1909. Consequently the Parliament Act of 1911 curtailed the powers of the Lords in respect of the ordinary bills. Now ordinary bills may become law without the consent of the Lords provided they have been passed by the Commons in three successive sessions, and provided also, that two years have elapsed between the second reading in the first session and the third reading in the third session of the House of Commons.[1]

In India ordinary bills may be introduced in either house, and become law only if approved by both houses. Dead-locks are resolved by a vote taken at a joint sitting of both houses. In countries like India, the United Kingdom, France, Canada, etc., the Upper House is comparatively weak. The Senate of the United States, however, has powers that are exceptional. Its control over treaties and appointments, its longer term and more select membership, and its historic role as representing the commonwealths have given it a prestige and power far greater than that of the House of Representatives. It is the most powerful of the upper houses of the world.

Notwithstanding the superior powers of one house or the other, there always remains in the background the danger of conflict and dead-lock between the two houses. A solution for such a danger has been found by some of the constitutions in the system of conferences between representatives of each House, as in the case of the United States and the United Kingdom; or in a joint sitting of both Houses as in the case of the Indian Republic.

DIRECT LEGISLATION: THE INITIATIVE AND REFERENDUM. In recent years there has been a marked tendency towards direct legislation by the people themselves

[1] It has now been reduced to one year.

instead of through their representatives. It has arisen from two sources. The first is the realization that the people are ultimately sovereign, and in order that popular sovereignty be real, the people should give their direct approval to the laws of the country. The second is the disappointment with, and distrust of the legislative bodies. Most of the legislatures dominated by parties do not often care for the real interest of the people. Partisan legislation meant to promote the interest of classes has been widely in evidence. Hence it is argued that the general will of the whole people as expressed in a direct vote should be consulted for purposes of legislation. To this the counter-argument offered is that the making of laws requires, like many other tasks of importance, a special training and experience. It cannot be entrusted to all and sundry. Besides, in every community people are so much absorbed in their private interests and take so little interest in public affairs that they cannot judge public and political questions submitted to them properly and in their correct perspective. Hence if the task of legislation is entrusted to carefully chosen bodies of representatives, popular interests are safer than when subjected to the hazards of direct legislation.

The dogma of popular sovereignty goes back in its origin to very ancient times. In Athens there was the Ecclesia, which was an assembly of all the free citizens, who decided on questions of peace and war, and voted on matters placed before them by the 'Council of Four Hundred.' In Rome there was the Comitia Tributa or meeting of the people by tribes, which became in the latter days of the Roman republic an assembly for legislation. In some of the cantons of Switzerland today there are assemblies of the people called *Landesgemeinde*, which have been working from time immemorial as legislative bodies. It is therefore held that all power belongs by nature and of right to the people, and it becomes truly effective only when exercised by them directly and not through their representatives. "The water must be drawn" as Bryce said "fresh from the spring among the rocks, not from the brook in its lower and perhaps polluted course."

The second source of the tendency for direct legislation is the growing distrust of the legislature, "which has reached its maximum in the United States. In many States the people balked in repeated efforts to cure the faults of those bodies, have assumed the power to review their action by subjecting acts passed by the legislature to a popular vote of approval or rejection and have also authorised a prescribed number of citizens to prepare and submit to such a vote Bills to be enacted without any intervention on the part of the legislatures."[1] Besides, the decision of the people taken directly is helpful in getting over the conflicts and dead-locks between the two chambers of a legislature. Except where the constitution provides that the voice of one of the chambers shall prevail against that of the other, "a means of deciding between them may be found in submitting the law or those parts of it, on which the chambers differ, to a vote of the whole people.... There are also cases in which the nature of a law proposed makes it specially desirable that the wishes of the citizens should be so directly expressed as to ensure their cordial support of it when enacted."[2]

THE REFERENDUM. This method of direct legislation assumes two forms, one Referendum, and two, Initiative. Referendum is submission to popular vote not only of amendments to the constitution, but also of ordinary laws passed by the legislature. It is in vogue in Switzerland and in many commonwealths of the United States. Referendum may be either obligatory or optional. In certain Swiss cantons all laws are required to be submitted to the popular vote. That is called obligatory or compulsory Referendum. In certain other Swiss cantons, in the Swiss Confederation, and in some of the commonwealths of the U.S.A. a law is submitted to the popular vote at the demand of a prescribed number of citizens. That is known as optional Referendum. In four out of the twenty-four cantons of Switzerland, viz. Uri, Unterwalden, Appenzel and Glarus, there is the *Landesgemeinde*, or Con-

[1] Bryce—*Modern Democracies* Vol. II p. 459.
[2] *Ibid.*, pp. 459-60.

gregation of the district when people meet once a year in a large meadow in order to vote taxes, pass laws, and elect their executive officers for the coming year. Even in the cantons with representative legislatures the referendum is largely used. In about half of them it is optional and in the rest compulsory for all legislative measures of importance. In all the cantons constitutional amendments can only be made, if ratified by a vote of the people. Similarly in the federal government of Switzerland the referendum is compulsory for all constitutional amendments. There is also an optional referendum requiring the submission of ordinary laws to the people if called for by thirty thousand citizens of eight cantons.

THE INITIATIVE. The Initiative is "the proposal by a prescribed number of citizens of a constitutional amendment, or a law to be voted upon by the whole people." It is in vogue in the Swiss Confederation so far as constitutional amendments are concerned. It is also adopted in matters of both constitutional amendments and ordinary laws in many of the Swiss cantons and in many commonwealths of the U.S.A. The Initiative in the shape of a proposal supported by fifty thousand voters exists in the federal government of Switzerland. Though nominally admissible on constitutional amendments it can in practice be applied to any measure by giving it the form of a change in the constitution. Between 1874 and 1908 thirty federal bills out of a total of 261 were submitted to popular vote and 19 were rejected and 11 were ratified.

RECALL. In the United States there is the New England "town meeting" or assembly of the Electors of the township, which closely corresponds to the *Landesgemeinde* of Switzerland. "The voters come together in a mass meeting once a year (and on special occasions if called for by petition) and not only elect the 'Select men' or officers of the township, but also vote on the raising of taxes, the spending of money, and on other local questions. Another form of direct legislation is seen in the ratification by the people of changes in the constitution, a system now practically universal in the United

States." But besides Referendum and Initiative some of the commonwealths of the U.S.A. have adopted the system known as Recall. The constitution, for example, of Oregon provides that "every public officer in Oregon is subject... to recall by the legal voters of the state or of the electoral district for which he is elected." No popular vote on a Recall is taken unless 20 per cent of the voters have demanded it. In the United States, mostly in the western states of the union like Arizona, Montana, Oklahoma, Washington etc. Referendum, Initiative and Recall have been adopted, and the whole system is growing in favour.

Apart from Referendum and Initiative, the system known as Recall merits special consideration. It is rather an unusual procedure. "Expressed in general terms this system means that all persons who hold office must do so only so long as their tenure of office is sanctioned by the will of the people; at any time when a majority of the voters desire it, the office holder is removed from his functions. The arguments for and against the system stand upon somewhat the same ground as those in regard to direct legislation. In idealistic terms it is argued that the will of the people ought to be the supreme power, and that Recall offers a means whereby the citizens may at once remove from office those who have abused their trust. The system, it is claimed, affords a ready weapon against political corruption and the sinister influence of the money power. To this it is answered, as in the case of direct legislation, that 'the people' are neither all wise nor all seeing; that the recall of a conscientious official may be brought about by a false appeal to the passions and interests of voters ignorant of the facts and details of the case; that the resulting uncertainty of office renders the conscientious performance of duty doubly difficult; and that far from being a protection against the malign influence of the money power, the recall introduces a new and dangerous form of public corruption. It is especially in regard to the recall of judicial officials that stress is laid on these principles."[1]

[1] Leacock, *Elements of Political Science*, p. 173.

Chapter XIV

THE EXECUTIVE

MEANING AND NATURE OF THE EXECUTIVE. The term "executive" generally means the body of those officers of the government, whose function it is to carry out or execute the law of the land. Sometimes it is used to mean the head of the executive, as for example the President of the Indian Union or the U.S.A. In the broadest sense the executive consists of all officers of government except those working in a legislative or judicial capacity. It thus includes the entire staff of officials engaged in administration comprising the commissioners, collectors, police officers, postmasters, revenue officers, etc. Occasionally even the army and the navy are included in the category of executive officials.

The distinction between the executive on the one hand, and the judiciary and the legislature on the other is based on the nature of their functions. For the executive quick decision, prompt action, and consistent policy are essential. To ensure these, authority is concentrated in a single head or a small group of men. The advantages of numbers in legislation where deliberation and caution are essential become dangers where energetic action is necessary. Napoleon used to say that "one bad general is better than two good ones".

COMPOSITION OF THE EXECUTIVE. The executive generally consists of (*a*) the executive head, (*b*) the cabinet or the executive council of which the heads of the great departments of administration are members, forming more or less a single unit, and (*c*) the civil service or the numerous subordinate officials in the administrative departments. In certain countries the executive head who is the head of the state exercises nominal authority as in Great Britain and France; in others he exercises real authority as in the U.S.A.

In some countries the cabinet actually controls the administrative departments, initiates state policy and guides legislation, and, to all practical purposes, is the government. Such cabinets there are in Great Britain, France, India etc. In the United States the cabinet is only an agency to help the President who is the chief executive head and exercises real power. The members are chosen by him, and responsible to him. They do not sit in the legislature and have nothing to do with legislation or formulation of policies. In Switzerland, however, the federal council corresponding to the cabinet, and consisting of seven members of the legislature, exercises the supreme executive power. "Although one of these members of the council is nominated each year to the titular dignity of President of the Swiss Confederation, he is in no sense above the others in authority. The members act severally as the heads of the seven governmental departments, though this is for convenience only, and not prescribed by the constitution. In their corporate capacity they manage the general conduct of administration." The civil service in all modern states is appointed according to certain principles and forms the ground-work of administration. Numerically it is by far the largest department of state.

CLASSIFICATION OF EXECUTIVES: (A) HEREDITARY EXECUTIVE. There are generally two ways of classifying the heads of the executive. One way is based on the method of choice, that is whether the executive head is elected by the people or succeeds by hereditary right. Elected executives hold office for a fixed period, and have their tenure well defined. Hereditary executives are almost always princes, kings and emperors. They hold office by virtue of their birth and enjoy a tenure which is not merely lifelong, but which passes to their heirs. The other way of classifying the heads of executive has reference to the measure of power they exercise. On this basis they are known as either real or nominal executives. Where the executive head is elected, he may or may not have real power. But in all democratic states where there is a king with hereditary office, he has only

nominal powers. Hereditary office or kingship ill accords with democratic ways of government. But wherever kingship persists, it is because of the historical traditions. Monarchy for example, has played a vital role in the political evolution of England. Hence it is regarded by the people there, not merely with tolerance but with very great favour. Even then the hereditary sovereign is only a nominal and not a real executive. So also in Italy, Belgium, Norway, Sweden and Japan where the actual conduct of government is not in the hands of the king. Actually the hereditary monarchs of the present day are nearly all constitutional monarchs. They reign but do not govern.

(B) ELECTED EXECUTIVE. In contrast to hereditary executives are those who are elected. In the republics of India, China, France, Switzerland, U.S.A. and many other countries the heads of the executive are all elected. But there is much diversity in the methods of election. Some of them follow direct and others indirect election. Most countries like India, China, the United States, France, and Switzerland follow indirect election, while some of the Latin American republics like Peru, Brazil, and Bolivia follow direct election. In the United States the President is elected by an electoral college in which every state has as many representatives as it has in the Congress. The President of the Indian Union is elected by an electoral college consisting of the elected members of parliament and of the state legislatures. In France the Parliament consisting of the two houses, sitting together, elects the President.

The distinction between the hereditary and elected executives and between the nominal and real executives is a cross classification. The hereditary king of England and the elected President of France are both nominal executives. In contrast to this, the elected President of the U.S.A. is a real executive, and so was the hereditary Emperor of Japan before 1947. In fact the distinction between the nominal and real executive depends upon the relation of the executive to the legislature. There are two distinct types of government, viz., parliamentary

or cabinet, and non-parliamentary or presidential. In the former the executive head is a nominal ruler, since the cabinet which enjoys the confidence of the legislature exercises real power. An example of it is the President of the Indian Union. In the latter the head of the executive is independent of the legislature and exercises definite powers irrespective of the will of the legislature, as in the case of the President of the U.S.A.

TERM OF THE EXECUTIVE HEAD. The duration of the tenure of office and re-eligibility are important questions in the matter of appointment of the executive head. In all democracies which have a republican type of government, long continuance in office is not favoured for fear that an office thus held may change into what is practically a monarchical office. That is why in the American republics the Presidents hold office for terms varying from four to six years, and in most of them they are not eligible for re-election. The President of the United States holds office for four years, and is eligible for re-election for a second term but not for a third. The tenure of the Indian President is five years. He is eligible for re-election, but for how many terms is not known. In France the President enjoys a tenure of office for seven years, and according to the constitution which came into force on December 24, 1946, can be re-elected only once (Art. 29). In the United States the convention for long was that the Presidents should not have more than two terms. But in the case of President F. D. Roosevelt this convention was broken when he was elected for the third time. Hence by the 22nd amendment passed on 26th of February 1951, the President's tenure was limited to two terms, or to two terms plus two years in case of a Vice-President who has succeeded to office on the death, resignation, or incapacity of the President. Such a regulation it may be said "deprives the country of the services of its greatest political leader at the very time when his matured experience has specially fitted him for his post. Certainly in England such a compulsory retirement of men like Gladstone, Beaconsfield, Salisbury and Lloyd George at the very zenith

of their political career would be considered a national loss."[1]

PARLIAMENTARY AND NON-PARLIAMENTARY GOVERNMENT. The executives in modern states are divided generally into two broad categories. One is commonly known as Parliamentary, Responsible, or Cabinet type; the other for want of an appropriate term, known as non-Parliamentary, Presidential, or Congressional type. In the Parliamentary type, as has been pointed out before, the tenure of office of the executive is dependent on the will of the legislature, while in the non-parliamentary type the tenure of office of the executive is independent of the will of the legislature. India, England, France etc., are examples of the first type while the U.S.A. is of the second type. The Swiss executive, however, combines the features of both, and is unique in composition and character.

HISTORY OF THE BRITISH CABINET. "The principle of parliamentary government is best understood by studying the evolution and operation of the British cabinet. The king of England was never without a group of councillors and chief officers to aid him in the conduct of government. These advisers, known in Norman times as the king's ordinary or permanent council, and from the time of Henry VI as the Privy Council were men of the king's own choice. They were the king's 'ministers' in the liberal sense of the term. Nor were they, for centuries after the consolidation of consultative assemblies into a national Parliament (1295) controlled by the legislature, except by the heroic remedy of impeachment. They were rather the natural antagonists of the Parliament than its chosen representatives. This is particularly seen during the tyranny of the Stuarts, when Sir Thomas Wentworth's desertion of the popular cause elevated him to the position of a minister of the crown. Moreover, the group of ministers who formed the King's Council constantly showed a

1 Leacock—*Elements of Political Science*, pp. 183-4.

tendency to increase unduly in numbers. This led to the concentration of power in the hands of an inner circle, to whom the name 'cabinet' came to be applied. The overthrow of the Stuarts and the recognition of the principle of the supremacy of Parliament by the Bill of Rights (and later by the Act of Settlement) rendered the previous relation of ministers and Parliament no longer possible. As a means of conducting the executive government with the support of the members of Parliament, William III, acting on the advice of the Earl of Sunderland, deliberately chose his ministers from the ranks of the party dominant in the Commons. This, if ever one may speak with propriety of a political invention, was the invention of the cabinet system of government. Yet the system thus instituted remained for nearly a century in a rudimentary and imperfect state. The ministers did not at first feel called upon to resign on the loss of parliamentary support. They preferred to wait, as did William's ministry in 1698, for the adverse majority to 'blow over'. Nor did the ministry throughout the first half of the eighteenth century resign or enter office as a body. Lord Rockingham's cabinet of 1765 may be looked upon as the first set of ministers coming into office as a body. Even till the end of the century the ministers, though they might belong to the same party, were not of necessity united in policy or harmonious in their political relations with one another. Pitt's insistence on the resignation of his refractory chancellor, Lord Turlow (1792) marks the recognition of this stage of cabinet evolution; the refusal of the ministers of George IV to give him individual advice in reference to a matter of foreign policy indicates its final adoption."[1]

FEATURES OF CABINET OR PARLIAMENTARY TYPE. The features of the cabinet or parliamentary government are that the ministry must belong to the majority party in the legislature, and must resign when they cease to enjoy the confidence of the party. They must work as a team on

[1] Leacock—*Elements of Political Science*, pp. 185-7.

the basis of joint responsibility under the leadership of the Prime Minister. The essential fact about this type of executive is that the ministry as consisting of the members of the legislature who control the different departments of the government works in constant responsibility to the legislature. It originated in England and became the model for adoption by others later on.

FEATURES OF THE NON-PARLIAMENTARY TYPE. The United States, however, evolved the non-parliamentary type, in which the executive's responsibility to the legislature is not the central fact. In the United States the head of the executive, i.e., the President is elected independently of the legislature and appoints his own cabinet of ministers who are responsible to him. They are not members of the legislature, and the legislature is not consulted about their appointment. The legislature cannot dictate to the President the political or administrative policy to be followed. It can neither control the policy followed by the President except in an indirect way.

FEATURES OF COMPOSITE OR SWISS TYPE. Between the Parliamentary executive of England and non-Parliamentary executive of the U.S.A. stands the Swiss executive, which combines the characteristics of both. It consists of seven ministers, who are politicians and members of the legislature, but who do not vacate office with the coming in or going out of the parties in legislature. They are invariably elected for five years and almost always re-elected. They are chosen because of their legislative experience, general capacity, and the confidence their character inspires. They are thus dependent upon the legislature for their appointment as in the United Kingdom, and yet independent of it as in the United States. Since they are appointed for a term and continue subsequently irrespective of the parties in the legislature, they do not work on the principle of joint responsibility either.

MERITS AND DEMERITS OF THE THREE TYPES. The three types described above, viz., the British, the American and the Swiss, have their own merits and demerits, depending on the manner they function and the political traditions which support them. The British type works evenly and well where two great political parties exist, which alternatively hold the power of government and of which one is gradually forced to give place to the other. But when many parties exist as in France, loose in cohesion and constantly forming and reforming into new coalitions, it introduces a dangerous element of instability into national government and leads to the sacrifice of principle for the sake of power. The presidential type seeks to realize the principle of separation of powers and the ideal of popular sovereignty. But the separation of the executive and the legislature involves the danger of antagonism between them in spite of their artificial junction effected by party ties Further, the election of the President, because of the great powers of the office, occasions periods of great excitement and upheaval, always unfavourable to industrial activity and, in turbulent countries, fraught with the possibilities of revolution. We may conclude our observations on the executives appointed on the basis of popular choice with the words of Lord Bryce: "The two disadvantages of the system are that the Minister may have no special competence, and that, however competent, he will, when his party loses power, be ejected from office he has successfully filled; but against these may be set the advantage that an able incoming Minister can bring in new ideas and help to keep his department in touch with the movements of public opinion. On the whole the system . . . gives good results, and would give better, if more weight were allowed in constructing a cabinet to the qualifications, general and special, of the politicians selected, and less to merely political reasons. This remark applies to England also, where, though family favouritism and social influence now count for very little, political considerations still take precedence of expert knowledge and skill."[1] To this the Swiss executive is

[1] Bryce—*Modern Democracies*, Vol. II, pp. 394-5.

an exception as importance is attached to capacity, character and experience in selecting ministers.

THE HEAD OF THE EXECUTIVE IN U.K., U.S.A., AND FRANCE. The top executive apart, there is a large body of officials serving in the various administrative departments, which is collectively known as the civil service. The top executive may be, as has been explained, titular like the British king and the French President, or real, like the President of the U.S.A. Where the head of the executive is a titular king or president, the real executive consists of a cabinet of ministers. In the United Kingdom each one of the ministers is in charge of a department of state, and they collectively shape and implement the policy of government. They work as one unit under the leadership of the Prime Minister who exercises a certain degree of control over them. They resign collectively, if the House of Commons does not approve of their action. Being members of the legislature they are politicians first and administrators afterwards. Their chief function is to bring the popular will to bear on the working of the administration, and to exercise a certain amount of supervision, direction, and control over their departmental subordinates. In the United States the President, who is the real executive head, appoints with the approval of the Senate, and removes. on his own initiative, his secretaries or heads of departments. They constitute his cabinet. But they have no separate responsibility of their own either individually or collectively. Their responsibility is merged in that of the President, and in administering their departments, they are subordinate to the President. The President is not obliged to take their advice and the resignation or removal of one member does not necessarily affect the others. By law they are not allowed to sit in the Congress, and by custom they are not permitted to speak before it.

France follows a pattern like that of the United Kingdom. The cabinet of ministers is like an administrative council as in England. It exercises the same functions and works on the same principles under the leadership of the Prime Minister.

The position of the President as the head of the executive is like that of the constitutional king of England. Every act of the French President has to be approved by the minister of the department concerned. "The position of the French President is therefore very difficult. Elected by the legislature for a definite term, he has apparently large powers, but the fact that all his acts must be approved by ministers responsible, not to him, but to a chamber of deputies, often controlled by parties other than that to which the President belongs, makes his authority nominal. The attempt of France to combine parliamentary and presidential government is a novelty in political science".[1] The result is that the French President neither reigns like the constitutional king of England nor rules like the elected President of the U.S.A.

ORGANIZATION OF THE TOP EXECUTIVE. The organization of the top executive is firstly based upon the actual administrative activities of the state. Broadly, they are divided into certain categories, and constitute departments which are also known as "portfolios". The essential activities of the state such as maintenance of peace and order, defence, justice, foreign relations etc., are formed into distinct departments on the ground of practicability or administrative convenience. That was the set-up of the executive for a long time in the past. But modern conditions have contributed to the complexity of social life. The state has been called upon to take up functions and render services, which a century before were regarded as of a social character. The state has, therefore, assumed more extensive powers of regulation and control. Naturally new departments of state like the industries, labour, communications, public health etc., have come into existence. Secondly, the ministerial councils or cabinets being of a political character have to be organized in such a way as to include leaders of groups, or of parties, if the cabinet happens to be a coalition cabinet. In non-parliamentary governments where the executive is neither composed from

1 Gettell—*Introduction to Political Science*, p. 265.

the legislature nor is responsible to it, the executive has to include a department for publicity and propaganda to win popular support. Thirdly, the line of organization differs in the case of the state-governments in a federation. In a federal state the component commonwealths cannot have departments like foreign relations, defence, communications, etc. These are controlled by the federal government.

Related to the departments are the executive functions and activities of government which have a distinct object in view. The Home department, also known as department of the Interior, works for the maintenance of internal peace and order. The department of Finance has to find out ways of raising money and controls the expenditure. The department of Defence has to organize the armed forces, maintain them, and protect the country from foreign aggressions. The department of Foreign or External Affairs organizes diplomatic services, maintains contact with foreign governments, establishes relations of mutual co-operation, friendship and good will, and takes care of its own nationals abroad. The departments of Justice, Education, Public Works, Commerce, Industries, Agriculture, Public Health etc., function with specific objects and seek thereby to secure the well-being of the state. These departments under the parliamentary system of government have, as has been explained, ministers to preside over them. They are called ministers in India and secretaries in the United Kingdom. Often the Indian ministers take deputy ministers, and the British secretaries take parliamentary under secretaries to assist them in their work in parliament. Below the ministers or secretaries are administrative heads of departments, who are members of the civil service, and who have nothing to do with politics.

THE CIVIL SERVICE. It is the civil service which actually runs the administrative departments of the state. It works under the direction and control of the ministers. Generally the chief of the executive, either the constitutional king or elected president, is invested with powers of appointment and dismissal, but that is only nominal. Actually these

powers are exercised on the advice of the ministers of the departmental heads. The civil service has a huge personnel which does not by convention include the personnel of the defence services, viz., the army, navy and air force, and also of the judicial service. The members of the civil service are independent of party politics, and enjoy a permanence of tenure, depending on good behaviour, except in the U.S.A. The civil service is generally divided into several categories. In India there are as many as four or five. The officials of local bodies like the corporations, municipalities, panchayats, etc., however, are not ranked as civil servants. Local bodies recruit their own staff. In some instances, at their request, their staff is recruited by the agency which is responsible for recruiting government servants, i.e., the public service commission. In most modern governments there are specially constituted agencies which recruit members of the civil service. This body, as a rule, has statutory powers in order that it may work independently of party politics, political influence, or personal pressure. In India, for example, a member of the State or Union Public Service Commission is not eligible, by law, for further appointment under the government. The Public Service Commission adopts the method of open competitive examination for recruitment to the civil as well as other services like the army, navy, and air force. The selection is made on the basis of results, strictly in order of merit. This practice obtains in India and the United Kingdom.

In the U.S.A., however, a system known as the "spoils system" prevailed for a long time. "With the advent of President Jackson (1829) was inaugurated the spoils system. Wholesale removals from office were made and the places thus made vacant became the prizes of the President's political followers. The disastrous precedent thus established was followed by later administrations, until the clean sweep of offices became a recurrent feature of American politics. Not the worst feature of the system has been the frequent incompetence of the persons appointed for political reasons to the vacant offices." The obvious injustice of the spoils system and the inefficiency thereby occasioned in the public services led

to a movement in favour of civil service reform which culminated in the Civil Service Act of 1883. The purpose of this Act is to separate, as far as possible, the civil service from politics, and to introduce the system of appointments by merit, based on competitive examinations. The Act establishes a body of three commissioners whose duty it is, at the request of the President, to aid him in drawing up rules directed towards the following objects: that open competitive examinations shall be held in all branches of the civil service when classified for the purpose, and that appointments to office shall be made from those applicants graded highest; that appointments at Washington shall be apportioned among states according to population; that no person in the public service shall be under the obligation to contribute to any political fund, nor shall any person in the public service use his authority to coerce the political action of any other person.

Chapter XV

THE JUDICIARY

As important as the legislature and the executive is the judiciary or the judicial branch of the government. But it is neither as large as the executive, nor as small as the legislature. Its chief function is to interpret and apply the law to individual cases. The legislature makes the laws, the executive gives effect to the laws, and the judiciary decides upon the application of the existing laws in individual cases. After the decision of the judiciary the executive goes about its business of carrying out the injunctions of the law. The work of the judiciary is, therefore, of a highly technical character. A judge must have an accurate and extensive knowledge of law. He must also have the trained intellect of a specialist.

FEATURES OF THE MODERN JUDICIARY. In the process of applying laws to individual cases, a judge has, besides, not to tamper with the spirit or letter of the law. That is a pitfall he has to avoid. He has to take the law as it is. He is not concerned as to whether a law is good or bad, just or unjust. It is often said that it is preferable that a bad law should work injustice in an individual case rather than that a judge should impair the spirit of the law itself by refusing to recognize it.

Another pitfall for a judge is the pressure of personal influence and the play of politics. He has to keep away from it. The nature of judicial functions demands that the judiciary must be as impartial and as completely independent of personal and political interests as possible. In progressive states, the judges, therefore, are adequately paid, without reference to the number and nature of their decisions, enjoy permanent tenure of office, and are completely secured from the goodwill or ill-will of the other branches of government and from political pressure. Thus the independence of the judges and

the permanence of their tenure are the two fundamental features of modern judiciary.

In India, for example, a judge of the Supreme Court or of a High Court is appointed by the President. Article 124 of the Indian Constitution prescribes that "a judge of the Supreme Court is not liable to be removed from office except by an order from the President, passed after an address by each house of Parliament, supported by a majority of total membership of that house, and by a majority of not less than two-thirds of the members of that house present and voting, has been presented to the President, in the same session for removal, on the ground of proved misbehaviour or incapacity." The same provision applies in the case of a High Court judge also. The constitution of the U.S.A. prescribes that "the judges both of the supreme and inferior courts shall hold their offices during good behaviour, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office." In the United Kingdom, judges can be removed only "upon an address of both Houses of Parliament."

ROLE AND FUNCTIONS OF THE JUDICIARY. One of the primary objects of the state is the protection of individual rights. It is the function of the judiciary to protect the innocent and punish the offender, to ascertain and decide rights, to prevent injury to the individual and usurpation by the strong against the weak, and to administer justice equitably. If justice is not properly administered, respect for law vanishes and obedience to government becomes doubtful. As Bryce pointed out, the judiciary is not only a necessity; more than that, it is a test of the excellence of government. For, there is nothing which more nearly touches the welfare and security of the average citizen than the feeling that he can rely on the certain and prompt administration of justice. When this feeling is not there, the individual and social security declines. That makes for the ruin of the state. "If the law be dishonestly administered, the salt has lost its savour, if it is weakly or fitfully enforced the guarantees of order fail, for

it is more by the certainty than by the severity of punishment that offences are repressed. If the lamp of justice goes out in darkness, how great is that darkness!"[1]

The chief function of the judiciary is, as has been pointed out, to decide civil suits between individuals, between the individuals and the state, and charges of crimes against individuals. Besides this, they are called upon to issue injunctions to prevent the commission of wrong and injury, and writs of various kinds like mandamuses to compel public offices to perform their legal duties and injunctions, to restrain them from doing what the law forbids. In countries like England they issue "declaratory judgments", that is, declarations of what is right and what the law requires when such opinions are sought by interested parties who do not want to start litigation. Apart from these functions which pertain to adjudication they sometimes work as trustees and guardians, admit wills to probate and administer the estates of deceased persons.

EXTRAORDINARY FUNCTIONS OF THE JUDICIARY. One of the extraordinary functions of the judiciary is to give decisions on the executive actions of government officials done in their official capacity. In this connection, the judges are called upon to declare whether such actions are or are not punishable on the basis of ordinary laws. They are also empowered, in certain countries, to declare whether the acts of the legislature are valid or not in the light of the provisions of the constitution. That is to say, the courts of law in certain countries have the authority to adjudicate upon the actions of the executive and legislative departments of the government. In countries like India, the United Kingdom, the U.S.A. and the Latin-American republics, the officers of the government are liable for prosecution for acts performed in their official capacity, and are answerable before the law courts. The presidents of the Indian Union and the U.S.A., as also the King of the United Kingdom, enjoy certain legal immunities, but their cases fall outside our consideration in

1 Bryce—*Modern Democracies*, Vol. II, p. 421.

this context In the United Kingdom, says Prof. Dicey, "every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen." For acts done in his official capacity but in excess of his lawful authority, a government official is liable to punishment or to the payment of damages, as if they were personal acts. Not only the members of the executive departments, but even those of the defence departments, like armymen and officers, are individually answerable before the ordinary courts of law for unlawful acts, even if performed at the command of their superior officers. Therefore, remarks Prof. Dicey, " the position of a soldier may be, both in theory and practice, a difficult one. He may, as it has been well said, be liable to be shot by a court martial, if he disobeys an order, and to be hanged by a judge and jury, if he obeys it." It may appear irrational, but it goes a great way in securing individual liberty. All are equal in the eyes of the law, and law-breakers should not go unpunished whatever be their status and functions. On these two principles is based "the rule of law" and that is the only way liberty can be maintained.

ADMINISTRATIVE LAW AND ADMINISTRATIVE COURTS. In the countries of continental Europe like France, the status of executive officers before the law is different. The principle by which the officials in England, America and India are answerable for their official acts before the law courts does not hold good in France. There this sort of liability is replaced by the rules and procedure commonly known as the administrative law, and there are special courts, known as administrative courts, which apply these laws. Under this system, government servants acting in their official capacity are not subject to the jurisdiction of the ordinary courts. They can be called to account only before the administrative courts which are graded, and run parallel with the ordinary courts. In France every Department, corresponding to an Indian district, has an administrative court, composed of the prefect and the prefecturial council, appointed by the Presi-

dent. There are, besides, the courts of accounts, councils of revision, colonial courts of conflict, and certain councils of pubiic instruction which exercise special jurisdiction. Final jurisdiction is exercised by the Council of State, a body nominated by the President. "A special body made up of equal representation from the two kinds of courts, together with the minister of justice and two added members, decides on cases of disputed competence." This arrangement for dispensing justice makes it clear that in France and some other countries of Continental Europe conflicts between individuals and the administration have to be settled by the administration itself. This is an idea repugnant to the British sense of justice, and in India we have gone the British way.

JUDICIARY PRONOUNCES UPON ACTS OF LEGISLATURE IN THE U.S.A. AND INDIA. The judiciary has, in certain countries, powers of judging the action of the legislature also. That is the case where the national and state legislatures are given by the constitution definite and limited powers of making laws. Such are the federal states like India and the U.S.A., in which the constitution defines the lgislature competence of the federal legislature, and the legislature of the federating units or commonwealths. It is the function of the law courts in these countries to decide whether or not the legislature of the federal government or of the federating commonwealth has kept within its competence in making any statute. The subjects for legislation are specified in each case and, if they transgress their powers, the law courts declare their acts or statutes unconstitutional and void. The constitution of the United States (1787) laid down that "the Judicial Power shall extend to all cases arising under this Constitution" and that "this Constitution and the Laws of the United States which shall be made in pursuance thereof . . . shall be the supreme Law of the Land: and the judges in every State shall be bound thereby." The Supreme Court of the U.S.A., in the famous case of Marbury *v.* Madison (1803) declared an act of the Congress unconstitutional, and that set, once for all, the relation between the legislature and the judiciary in

the U.S.A. Since then the principle has been adopted everywhere, and the federal states like Canada, Australia, and India have invested the judiciary with powers to declare whether or not an act of the legislature violates the provisions of the constitution. The judiciary thus becomes the guardian of the constitution in those countries, and, therefore, occupies a position superior to all other branches of government.

BRITISH AND FRENCH PRACTICE. In Great Britain which has a unitary constitution, no court of law can declare an act of Parliament invalid or void. There the supremacy of Parliament is the keystone of the Constitution. If that body enacted a law infringing the most sacred rights and cherished traditions of the people, public opinion may oppose it and pronounce it "unconstitutional", but no court of law dare do it. In France also the supremacy of Parliament is a fundamental principle of the Constitution. No law enacted by the French Parliament and duly promulgated by the President can be declared unconstitutional or invalid whether it is in accordance with the Constitution or not. The French people have "refused to admit the right of the courts to declare acts of Parliament unconstitutional, first because they consider that it would be a violation of the sacrosanct theory of the separation of legislative and judicial powers proclaimed in 1789 and 1790; second, because it would lead to the supremacy of the judiciary over the legislature—the one organ which represents the people, and which is elected to express their sovereign will; and third because it would, in all likelihood, provoke conflicts between the legislative and judicial authorities and put into the hands of the courts the power to obstruct reforms through legislation. . . ."[1] Besides the above-mentioned reasons, it may be added also that France being a unitary state, the sovereignty of the national parliament stands unassailed and division of powers between two parallel legislative bodies—one of the central or national and the other of the local or commonwealth government—as in a federal state

[1] Garner—*Political Science and Government*, p. 766.

is unknown. Conflicts of jurisdiction, therefore, do not arise and the judiciary is not required to play the role that it does in a federal state like the U.S.A. or India.

SWISS PRACTICE. In Switzerland, however, the judiciary, and particularly the federal judiciary, plays a different role. Even though Switzerland is a federal state, "the Swiss Tribunal cannot declare any Federal law or part of a law to be invalid as infringing some provision of the Federal Constitution. It may annul a Cantonal law as transgressing either the Federal or a Cantonal Constitution, but the constitution expressly assigns to the Federal Legislature the right of interpreting both the Federal Constitution itself, and all laws passed thereunder, so that it can put its own construction on every law which it has itself passed, without the intervention of the judicial authority to correct it." Further, the Swiss judiciary has no jurisdiction over government servants when charged with some fault or sued by a private person for some alleged wrong. Such cases, dealt with by the ordinary courts in England, the U.S.A., and India, and by the administrative courts in France, are reserved for the Federal Council or Federal Assembly in Switzerland. In this, Switzerland stands out almost as a unique example of the legislature exercising judicial authority over the executive.

APPOINTMENT OF JUDGES. (a) *Election by the Legislature.* Generally, there are three ways of appointing judges. The first is election by the legislature, the second is election by the people, and the third is appointment by the executive. Election of judges by the legislature is rather uncommon. It is in vogue in Switzerland and in one or two states of the U.S.A. This method has many disadvantages. Election by the legislature means election by parties and of party candidates. A judge thus elected need not possess those qualifications which are necessary for correct and impartial judicial decisions. In Switzerland conditions may be favourable, but elsewhere it is doubtful whether the method could be adopted with any satisfactory result. In the U.S.A. it was tried after

the American Revolution but was given up except in one or two states.

(b) *Election by the People.* The method of popular election has however a wider vogue. The President in the U.S.A. appoints the federal judges with the approval of the Senate while in the states the judges are elected by the people. Popular election under modern democracies means party election, and those who seek election must be subservient to the wishes of the people. They cannot maintain an attitude of independence and impartiality, which is essential for a judge. A judge elected by the people cannot act without fear or favour. Besides, an electorate is not likely to understand what special qualities are necessary to make a good judge. It may go by its own preferences and prejudices. And judges thus elected may contribute to the corruption of justice. "In the United States there are innumerable examples in which good candidates have been beaten at elections. Popular election is still worse where the tenure is short and the judge is eligible for re-election. Where re-election depends on popular favour, no judge can be independent."[1]

(c) *Appointment by the Executive.* The most satisfactory and most widely prevalent method is the appointment of judges by the executive, with proper conditions attached to the appointment. The executive is generally placed in a position to assess the personal qualities necessary for the judicial office. It can also call for expert advice and lay down qualifications which have to be fulfilled for appointment. In India, for example, the High Court and Supreme Court judges are appointed by the President on the basis of honest, recognised and commendable judicial work, as also on the basis of expert advice. Other judges of the states are generally appointed through the agency of the Public Service Commission. It may be argued that where the executive is responsible to the legislature, freedom of the executive from party considerations may not be possible, and the appointment of judges may be influenced by politics. That possibility is sought to be elimi-

1 Gilchrist—*Political Science*, p. 337.

nated by guaranteeing the tenure and independence of the judges by constitutional provisions. Independence in a judge demands security in his post. Removal must be made difficult, but not impossible, for otherwise a corrupt judge will hold office for life and that will be disastrous. Hence, generally, good behaviour is the only condition attached to judicial tenure. In India, removal is determined on the grounds of "proved misbehaviour or insanity". In Great Britain, judges can be removed on an address of both houses of Parliament. In the United States, the most common mode of removal is by impeachment. That is generally done by the House of Representatives preferring charges and the Senate conducting the trial. "Recently the method of recall by popular election has found many advocates in the United States, and it has actually been adopted by constitutional amendment in seven states (Arizona, California, Colorado, Kansas, Nevada, North Dakota and Oregon). This mode of removing judges has, however, been severely condemned by American jurists generally as destructive of the independence and dignity of the judiciary, and there seems little likelihood that it will ever find general favour or acceptance."[1]

One of the primary conditions of a judge's independence is the remuneration that is offered for his work. It is as important as his security of tenure. But very often the remuneration that is offered to a judge is rather scanty, so that capable men are not attracted. It must be realized that, since law is the condition of liberty, the interpreter of law and dispenser of justice must possess the highest qualities of character and intelligence, and, therefore, must be well paid. A judge who has not to think of promotion or re-election by any means open to him, will always find it easier to be independent; and such a man can serve the ends of justice and democracy better than the one who behaves differently.

ORGANIZATION OF THE JUDICIARY. The organization of the judiciary is based upon certain well-recognised

[1] Garner—*Political Science and Government*, p. 801.

principles. Firstly, the courts of law everywhere in the world are arranged in the form of a hierarchy. That is to say, they stand in an ascending order, the lowest courts coming at the bottom with higher and higher courts above them, till the highest court comes at the top. The higher courts exercise powers of review, revision, or rejection of the verdicts of the lower courts. The appeal lies from a lower to the next higher court, and the topmost court or the Supreme Court is the last court of appeal.

The second principle of judicial organization is that the courts are divided into civil and criminal, according to the nature of law suits they have to deal with. Besides the civil and criminal courts, there are special courts like the Labour Tribunals, the Panchayat Courts, called the Nyaya Panchayats, for rural areas etc., in India and the Municipal Courts, Police Courts etc. in the U.S.A.

Thirdly, in the federal states there must be two sets of courts: one, of the states, that is, of the federating commonwealths; and the other, of the federal or the central government. In India and the U.S.A. the states of the Union have their own judicial organization. But in India the law they administer is uniform throughout the country, while in the U.S.A. the laws of the states vary a good deal. In India, every state has a High Court with powers of superintendence over all the subordinate courts in the state. The highest court of appeal is known as the Supreme Court both in India and the United States. In the United Kingdom it is called the Judicial Committee of the Privy Council. In the United States, the Federal Judiciary consists of a Supreme Court, eleven circuit courts, and 84 district courts. Each of the 48 states is assigned to one of the circuits, and has at least one District Court, while some of the larger ones have as many as four. These courts are empowered to take cognisance of cases relating to the violation of the Federal Statutes. In India, which is a federal state like the U.S.A., the federal courts are not spread over the country and there is nothing like a federal system of judiciary side by side with the state systems in the Union. All the courts in India form a single hierarchy, with

the Supreme Court at the top, which constitutes the highest court of appeal in the country, both in respect of constitutional matters and of matters, civil and criminal.

Chapter XVI

THE POLITICAL PARTIES

THE existence of parties is a notable feature of political life today. It has become an indispensable adjunct of modern democracies. Political parties are found intimately associated with the organization of all democratic governments. Even dictatorial forms of government have not been able to dispense with parties. They have only one party—the party that rules, and not more than one. They do not recognize other parties and tolerate them, but seek to wipe them out. Parties are essential in democracies for elections. When elections are over they also become indispensable for purposes of government. The party that secures the majority of seats in the state legislature runs the government, and those which are in a minority form a sort of opposition, either singly or in combination.

Democratic government cannot function without parties. Parties are formed when people holding similar views about the political affairs of the country in general, and the policy of government and problems of the state in particular, come together. Those who hold clear-cut views about these matters and offer suggestions as to what the policy of government should be or how the problems of the state can be solved, or how national development and people's welfare can be achieved, are acclaimed as leaders. Thus a political party is formed. And there can be as many political parties as there are common points of view, crystallised opinions, or distinct approaches to the problems of the country, put forward by organized groups of citizens. In human affairs opinions tend to flow in common, and more or less definitely marked, channels. And it is also a fundamental fact of human nature that while men differ in their opinions they cannot but live together. That is why groups are formed, each with a distinct cast of opinion. They oppose each other, seek popular support

in ever increasing measure and, if they win the elections, run the government. "A political party may thus be defined as an organized group of citizens who profess to share the same political views and who, by acting as a political unit, try to control government. The chief aim of the party is to make its own opinions and policy prevail. To do so it is necessary to control the legislature in the state. To control the legislature means that party representatives must be in a majority in the legislature. Parties therefore are organized to manage elections. . . ."[1]

FUNCTION OF PARTIES. It is the function of parties to conduct elections in a democratic state. A democratic state follows parliamentary procedure, and parliamentary procedure is based on free voting of the people to elect their representatives. When people are called upon to elect their representatives, the problem before them is for whom to vote, and on what basis. That basis is supplied by political parties. The parties point out what they stand for. And what they stand for is outlined in their programme, and that is placed before the people. The party programme explains what they propose to do for the people, and how they would run the government. That supplies sufficient guidance to the people before they vote. The parties enlighten the people about the problems of the country, policies of the government, and needs of the people as they understand them. On that basis they seek the support of the people and canvass for their votes. That is why parties are essential for purposes of election. If there were no parties people would cast their votes indiscriminately and without understanding the real purpose for which representatives are elected. The function of the parties is thus to enlighten the people about the political and social affairs of the country and to offer a sort of guidance in the matter of electing their representatives.

PROGRAMME OF PARTIES. This two-fold function of

[1] Gilchrist—*Political Science*, pp. 349-50.

the parties helps in educating the electorate. The parties maintain an elaborate machinery for propaganda, that is for spreading their political opinions, and for winning popular support for those opinions. They spend money, enrol members, publish party literature, and address meetings in order to contact and influence the masses. In the countries where democracy has been long established, strong party organizations have developed with clear-cut party programmes. It is interesting, for example, to note the programmes of the two outstanding political parties of the U.S.A.—the Republicans and the Democrats, which have existed for more than a century.

Republican Party—Traditionally it is the high tariff party, strong in the Northern and Central States.

(a) *In Foreign Policy*—Promises dedication to an honourable and just peace as the supreme goal; to this end advocates encouraging and aiding the development of collective security forces to halt Soviet intimidation, and to enable free governments to resist communist inroads; favours use of friendly influence in Western Europe to end political and economic divisions preventing that area from being strong in its own right; supports the United Nations; opposes treaties and agreements which would deprive U.S. citizens of rights guaranteed by the federal constitution; urges measuring of foreign commitments so that they can be borne without endangering the economic health or sound finances of the U.S.; recommends strengthening of ties with American republics, continued interest in the welfare of Israel and the use of influence in the service of peace between Israel and the Arab states; supports the international exchange of students, of agricultural and industrial techniques, and of programmes for the improvement of public health; urges co-ordination of military policy with foreign policy, always seeking universal limitation and control of armaments on a dependable basis; emphasises that U.S. defence and treaty obligations require the quickest possible development of power and the simultaneous readiness of co-ordinated air, land and sea forces with all necessary installations, bases, supplies, and munitions

including atomic energy weapons in abundance.

(b) *In Domestic Policy*—Designates as objectives a balanced budget, a reduced national debt, an economical administration and a cut in taxes; pledges reorganization of the Federal government in accordance with principles set forth in the report of the Hoover Commission, the elimination of corruption and graft in government, the impartial administration of tax laws, the vigorous enforcement of laws to safeguard the United States from subversion; opposes Federal rent control except in certain defence production areas; favours share clearance, advocates a farm programme aimed at full parity prices for all farm products; supports an expanded soil conservation programme, flood control programmes, and expanded agricultural research and education; purposes some aid and compensation for veterans of the Korean conflict as for veterans of previous wars; advocates extension of social security coverage to persons justly entitled to it but not presently covered; promises to enact Federal legislation to further just and equitable treatment in the area of discriminatory employment practices; recommends to Congress the submission of a constitutional amendment providing equal rights for men and women; favours statehood for Hawaii, Alaska, and eventually Puerto Rico; and self-government and national suffrage for the residents of the District of Columbia.

Democratic Party—Traditionally it is the low-tariff party, strong in the Southern States.

(a) *In Foreign Policy*—Declares that peace with honour is the greatest goal; promises continuing efforts to strengthen the United Nations and to bring about a peace settlement in Korea in accordance with the principles of the U.N. Charter; encourages the political and economic unity of free Europe, and the increasing solidarity of the nations of the North Atlantic community; pledges continuous support to the Schuman Plan and European Defence Community; sympathises with the aspirations of the German people for unity; looks forward to the restoration of the liberties of nations under Soviet domination; recommends that the United States join other nations in declaring genocide to be an international crime; favours deve-

lopment of security arrangements for the Middle East and other assistance to safeguard the independence of countries in that area; pledges continued assistance to Israel; supports the tripartite declaration of May 1950 and aid to Arab states; supports measures for relief and re-integration of Palestine refugees and for building the democratic strength of India and Pakistan; seeks increased security and progress for the Pacific area; promises continued assistance to the Nationalist Government in China; pledges continued dedication to the policy of the good neighbour in the Western hemisphere; stands prepared to join a workable system of inspection and limitation of armaments; urges U.S. and U.N. sponsorship of stronger Point Four programmes; reaffirms the Wilsonian principle of the right of national self-determination; supports expansion of world trade; opposes weakening of the reciprocal trade programme; pledges cooperation with other free nations to help protect refugees from Communism and over-population; recommends continuing revision of U.S. immigration and naturalization laws to do away with any unjust and unfair practices against national groups.

(b) *In Domestic Policy*—Urges continuance of the control programme to combat inflation; promises removal of controls when no longer required; pledges devotion to maintenance of maximum employment, production, and purchasing power; opposes federal general sales tax; favours reduction of taxes, especially on people with lower incomes, when defence requirements permit; pledges continued efforts to close tax loopholes which favour special groups; supports expanding agricultural production, price supports for farm commodities at not less than 90 per cent of parity, and increased agricultural research and education; favours extension of the rural electrification programme; promises maintenance of fair labour standards, equal pay for equal work regardless of sex; pledges fair treatment of small business; urges the enactment of laws providing incentives for the establishment and survival of independent business; promises vigorous enforcement of anti-trust laws; supports further development of the transportation systems by land, sea and air; in the field of atomic energy pledges ade-

quate security; safeguards the development of nuclear energy for peaceful purposes; urges the building of atomic and hydrogen fire-power needed for defence, and cooperation in bringing about bonafide international control and inspection of atomic weapons; advocates extension and improvement of the Social Security System covering the aged, sick, and unemployed; urges further development of the housing programme, public and private, increased maternity, child health and welfare services, improved services for veterans; promises continuing devotion to efficient administration of the Federal government, improved postal service, strengthened civil service; urges immediate statehood for Alaska and Hawaii, support of the Puerto Rican Commonwealth, home rule and ultimate national representation for the District of Columbia; advocates federal legislation to secure equal rights and freedom of all citizens from arbitrary restraints.

PARTIES IN LEGISLATURE. Such are the party programmes. It is clear that they furnish a consensus of opinion regarding the problems and needs of the nation. They thus become helpful to the electors in making up their minds and in the choice of the candidates for whom they want to vote. After the election, the usefulness of the parties becomes even greater. Since democratic government is representative government, and representative government follows the parliamentary procedure of free discussion on party lines before reaching decisions, political parties play a vital role in the legislature. The majority party supports the government and its policy. The rest oppose the government, and are critical of every action of government. And parliamentary procedure regards the party in power as important as the party in opposition for the success of democracy. In the British Parliament the leader of opposition enjoys a special status and is paid a salary. The opposition party is known as Her Majesty's Opposition.

Indeed, if democratic government based on parliamentary procedure is to function properly there should be two well-marked divisions in the national legislature: one, of the majo-

rity party or a coalition of parties that forms the government; the other, of the remaining party or parties, who may stand together or separately for purposes of opposition. The ideal position is attained if there are only two parties. But that is hardly possible under the complexities of modern political life. Even in Britain the mid-nineteenth century party alignments —Conservatives and Liberals—changed when the Irish Nationalist Party, in the eighties, and, later, when the Labour party at the beginning of this century came into existence. In the British House of Commons, there were, in 1914, three well-organized parties, to which two or three much smaller groups have now been added. In the German Reichstag there were in 1914 five or six parties, while in the French Chamber the eleven or twelve have been but slightly reduced in number. There were as many as eight parties before the Nazis came to power in Germany, and ten is the normal number of parties in France. In India, there were originally the Congress, Muslim League, and Liberal Parties before the 1951-52 general election. At the time of the General Election more than eight parties came into being, fought the elections, and had their the Loka Sabha—the Lower House of the Indian Parliament—there are the Congress, Praja Socialist, Communist, Jan Sangh, Scheduled Caste Federation, Hindu Mahasabha, Independent, Gantantra Parishad and a few other parties.

GENESIS OF MULTI-PARTY SYSTEM. It is not possible that there should be only two parties to work a democracy. It is easy to see how political parties came into being. If the problems of a country are varied, and admit of a wide range of opinions as to how they should be solved, then many parties come into being. Lord Bryce thus explains the genesis of the multiple party system in the European countries. It is due to several factors. "Whereas the middle of the last century was an era of destruction, when monarchical or oligarchic institutions were being rejected in favour of more popular forms of government, all advocates of reform, while differing on some points, could agree in getting rid of what had become odious or obsolete. When, however, the work of construction

had to be undertaken, divergences appeared between sections, each of which had schemes of its own to propound. Thus Radicals drew apart from Liberals, and the classes which had special grievances tended to form class parties. Nevertheless there were also at work other causes, varying in different countries. Among these were Race and Religion. In Germany a Roman Catholic party arose many years ago, while the Poles formed a group by themselves. In the United Kingdom the sentiment of Irish nationality created a third party opposed to Liberals and Tories alike. In France the Catholic Church has kept alive a party which was at first Monarchist, and still resists the anti-clerical Republican majority. This has happened in Holland and Belgium also. In Canada a Farmers' Party and even in Switzerland a Peasants' Party, has arisen. In these countries as well as in Britain and Australia, Socialist or Labour parties have evolved themselves on a basis partly of class interest and partly of theoretic doctrine. Only in the United States have the two old, established parties been strong enough to maintain their supremacy, doing this the more easily because it is not Congress but a vote of the people every four years that gives executive power to one or other party, so that the legislature is not, as in 'Parliamentary Countries' the centre of political conflict. That Republic has thus escaped two unfortunate results which the Group system has produced in countries living under the Parliamentary frame of Government. One is the instability of cabinets, the other the difficulty of carrying through controversial legislation".[1]

The multiple-party or group system and the two-party system are only two different techniques for running a democratic government. Where there are two parties it is easy to form cabinets. But when there are more than two parties it is probable that no one party may be in majority. The executive or cabinet being dependent on the support of a majority can be defeated and turned out of power by a combination of minority parties. Again, when the minorities combine to form a new executive, it is exposed to the same peril, in case there

[1] Bryce—*Modern Democracies*, Vol. II, pp. 380-1.

is a split among them. This state of affairs affects not only the tenure of office of the executive but the consistency and thoroughness of legislative measures. It leads to bargaining between parties in respect of legislation and distribution of offices, and sometimes ugly situations and deadlocks are created. These drawbacks are inherent in the multi-party system, and hence the two-party system is preferable to the multi-party system. The advantages of two-party system can be summarised in the following words: "(*i*) It gives the necessary strength and stability which enable the government to attempt great measures. Long-term planning of policy can be successfully attempted only by a government which is certain of a reasonably long period of office; that certainty can be provided, if at all, only under a dual party system. (*ii*) The multiple party system not only enfeebles the executive, but gives disproportionate power to self-seeking minorities; it turns important branches of legislation into class bribery and thus lowers the tone of public life. (*iii*) The dual party system leads further to a more regular, systematic and sober criticism of government than is likely under the group system. . . . (*iv*) The superiority of a two-party system over a multiplicity of groups is to be found, above all, in the fact that it provides the only method by which the people at the electoral period can directly choose their government."[1]

The point can be best illustrated by a reference to the governments in Britain and France. The existence of two outstanding and well-organised parties in British politics has always contributed to the stability of ministries in Britain whereas the growth of numerous parties in France, particularly after World War II, has shortened the life of French ministries, sometimes to as little as one or two weeks only.

PARTY ORGANIZATION. (a) *United Kingdom.* Parties in almost all the well-established democracies of the world are highly organized bodies. They have generally two main functions: one, to enlist the support of as large a section of

[1] Appadorai—*The Substance of Politics*, p. 505.

the electorate as possible; and two, to hold the party together in the Legislature. In the United Kingdom each party has its own central office. The central office keeps in constant touch with a network of local associations spread throughout the country, issues directives and useful information, distributes party propaganda literature, and works in all matters in conjunction with the local associations. The whip no longer controls the party organization because its parliamentary side has, of late, been separated from its election side. The parliamentary leaders play an important part in the work of the central office, but the Chairman of the party organization—in the case of the Labour party the secretary—has replaced the whip as the directing head of the party programmes and policy.

The local associations depend largely upon the work of the paid agents of the party for propaganda and electioneering work. The central office controls the local units because these generally depend upon the subventions from the central office. The local associations raise some contributions for the party, but that is not enough. The central office also directs the choice of the candidates throughout the country at the time of election. The accounts of the party are kept secret, but it is commonly believed that those who expect office or some such honour if the party captures power, pay generously towards the party funds.

"The leaders of each party, usually holding office in Parliament or in the cabinet, virtually dictate the policy of the party, and in their addresses or 'open letters' formulate its platform. In each voting district of a parliamentary constituency local affiliations of the central organization are found. The leaders of these local units aim to control their districts and harmonize their policy with that of the national leaders. Delegates from these districts form the party council of the constituency; delegates from the constituencies form the party council of the county or borough; and delegates from these units form the national party organization in London."[1] That is, in outline,

[1] Gettell—*Introduction to Political Science*, p. 306.

the framework of party organization in the United Kingdom.

(b) *United States.* In the United States each party is held together by a series of committees and conventions. In the smallest local district there is a "primary" or "caucus" which is composed of all the voters of the party in the district. This caucus, or primary, selects office-bearers for the district and delegates for the party meeting of the next larger unit. The meeting or "convention" of the larger district appoints a committee, nominates the office-bearers, and sends delegates to the state convention. The state convention, i.e. of each commonwealth, selects members of the state committee, nominates office-bearers, and sends delegates for the national convention. The national convention is held once in four years for the election of the President and Vice-President. It selects the national committee composed of one member from each commonwealth and nominates its candidates for Presidency and Vice-Presidency. The national convention wields the ultimate authority of the party and is the head of the whole organization. It is composed of twice as many delegates from each state as the state has members in Congress, together with delegates from the outlying territories of the U.S.A. In selecting delegates, two are chosen from each congressional district and four from the commonwealth at large. In nominating presidential candidates, the Republican convention requires a simple majority, while the Democratic convention a two-thirds majority. The Republican convention permits delegates to vote as individuals, while the Democratic convention requires statewise voting, that is, the entire vote of a commonwealth must be cast as a unit for the same candidate.

That is how the parties function in the U.S.A. They have their standing committees which fix the time and place of meeting of conventions, and do most of the actual work required to be done before the conventions meet. They raise and allocate funds, distribute party literature, and hold meetings before the elections. At the time of the elections they try to secure a large party vote with the assistance of special committees formed for the electioneering campaign.

MERITS AND DEMERITS OF PARTY SYSTEM. It has been pointed out that parties are essential for representative democracies. They create common platforms and awaken the electorate to the needs of the nation. They educate people to think on public questions, and unite in advocating a common body of principles and policies for purposes of government. Without them, voting will be desultory, disorganized, and pointless. Further, when a government is formed by the majority party, the party organization keeps the government in constant touch with the people. That is essential for the success of democracy. In the federal states like the U.S.A. and India, parties serve a very useful purpose. They control both the central and local politics, and thus maintain a bond of union between the federal government and state governments, thus making for uniformity in policy and administration. These are some of its great merits.

Its opponents point out that very often parties mislead people by their propaganda machines, and seek to create an artificial unity among the people, which is deceptive and basically wrong. People are not psychologically divided into a few great groups, hold all shades of opinion. Party agreement therefore is based on prejudice rather than on sound judgment. The party system is opposed to democracy inasmuch as it suppresses individual opinions and actions, that form the very basis of free government. Thus it becomes an engine for destroying the general will, obscuring public opinion, and setting up a new form of despotism. Parties are more interested in catching votes rather than achieving the good of the country. They encourage loyalty to the party at the cost of loyalty to the state. Again, since parties grow up as extra-legal organizations, outside the regular machinery of the state, they tend to be irresponsible and uncontrolled, and offer opportunity for corruption and misgovernment. In the U.S.A. this has given rise to the "spoils system" under which governmental positions are looked upon as a proper reward for party service. Besides, they make little provision for real leadership. Ordinary voters and members of the party fall into the clutches of

those who manage the party organization—that small group of politicians known as the "machine" in the U.S.A. Committees and conventions are composed of their henchmen; nominations are prearranged; and the unity of the party is maintained by direct and indirect rewards to followers of the party. This is a sort of feudal system that has invaded democratic politics. In the legislature, it becomes the duty of party members to support all measures sponsored by the party, and oppose all measures sponsored by its opponents, no matter whether the measures of the opponents are good or bad. This destroys intellectual honesty to secure political conformity, and suppresses personality to secure the unity of the party.

ROLE OF THE REPRESENTATIVE. Now the question arises as to what should be the role of the representative in a set-up of party government. Should he be regarded as the delegate, deputy, or agent of the particular constituency which elects him? Then he should be primarily charged with securing all sorts of advantages through legislation for his constituency. Or should he be regarded as the representative of the whole state? In that case his first duty is to work for the advancement of the general interest of the nation and next for that of his constituency. Or should he be regarded as a mouthpiece or spokesman of the political party? Then he has to work in conformity with the policy and principles of the party, whatever be his personal views in respect of the policy of the state or legislation affecting the state, and his own constituency. It is possible that he might act as the representative of his particular constituency, and at the same time serve and obey his party in respect of its national and local policy. But he can hardly act as the representative of national interest if that is in conflict with the interest of his constituency. The old conception of the functions of a representative was that he was the agent of his constituency rather than the representative of the nation. That idea disappeared before the seventeenth century in England, and after the French Revolution in France.

"The modern idea was embodied in constitutional law for

the first time when it was expressly proclaimed in the French Constitution of 1791 that the deputy should not be the representative of any particular 'department' but of the entire nation, and that no instructions should be given to him. The same principle was expressed in the German imperial constitution of 1871 (Art. 29); in the French organic law of November 30, 1875 (Sec. 13); in the Austrian Electoral Law of 1867, and in the Swiss Constitution of 1874 (Art. 91) which declared that members of the legislature should vote without instructions. Virtually all the new constitutions that have been put into effect in Europe since the World War proclaim the same principle. It is significant however that this view has not been specially laid down in any of the American Constitutions."[1] The consensus of learned opinion, that is of the statesmen and political thinkers, also supports this view. Lord Brougham thought that a member of Parliament "represents the people of the whole community, exercises his own judgment upon all measures, receives freely the communications of his constituents, and is not bound by their instructions, though liable to be dismissed by not being re-elected in case the difference of opinion between him and them is irreconcilable and important." Prof. Bluntschli declared that the modern representative is a state representative, not the representative of any person, corporation, or group, and his duty is a state duty. Prof. Esmein thought in the same way. According to him, the representative must have full independence of judgment and action in order to fulfill his mission. If, however, his action and judgment are determined in advance for him he ceases to be a representative and becomes merely a delegate. We may conclude with the remarks of Prof. Burgess that the views of a constituency should always be taken into account as contributing to the will of the state, but the will of a constituency has not absolute place in the modern system of legislative representation. It may also be pointed out in this context that if the representative feels that he cannot do his duty by the state as a member of his own

[1] Garner—*Political Science and Government*, pp. 665-6.

party he should resign, and seek re-election. Here he should be, as Mill observed, guided by what public opinion demands, and whether his conscience and judgment approximate to it or not.

Chapter XVII

THE FEDERAL GOVERNMENT

FEDERAL Government as a mechanism of state is most widely in vogue in the world today. Democratic or socialistic, monarchical or republican, whatever be the pattern of state, federal government has an appeal and utility for all. In the development of the modern states the principle of federalism has played a very important part indeed. It supplies the most convenient mechanism to form and work bigger and bigger political unions. It has in the past offered the most satisfactory solution of the conflicting interests of peoples who have lived as neighbours. It has supplied the cohesive element necessary to constitute federations like the U.S.A., Canada, the U.S.S.R., China, Switzerland and many others. It has a potency and resilience which helps nationally and culturally distinct groups to combine for common political ends.

History reveals that from very early times the political tendency of peoples has been towards expansion. To accomplish this two great historical forces have been at work. One of the two is conquest, absorption, and expansion. The growth of empires in the past in India and Europe, and of the British Empire, and the French monarchy illustrate this. The other is the "deliberate federal union whereby a basis of compromise is afforded permitting political junctions of previous states which are too closely connected by situation, language, and customs to remain apart, but which are too unlike in area, local customs etc. to permit of complete amalgamation." The United States, the U.S.S.R. and India illustrate this. Of these two factors of expansion the first is of war and the second is of peace. Under modern conditions, the first has been completely outmoded. The second is the most agreeable and enduring way. Napoleon built up an empire by war in Europe and it did not last. The Austro-Hungarian Empire, built upon force, dissolved after

the first World War. So did the Japanese and Italian Empires after the second World War. Much of the British Empire, built upon force, has dissolved, but it has taken the new shape of a Commonwealth. The Commonwealth is based on the principle of self-determination and free association of the peoples and, therefore, is likely to last long. When the Russian Empire fell as a result of the revolution of 1917, it also assumed the form of a union of free peoples known as the Union of Soviet Socialist Republics. With the withdrawal of the British from India, the Indian Union arose combining a number of autonomous states. The Peoples' Republic of China has had a similar history. Thus the modern tendency is towards political unions on the principle of federation. Political expansion or domination on the basis of force has been discredited and discarded, since it does not fit in with the ideal of democracy.

DIFFERENT KINDS OF UNIONS. The essential feature of a modern federal state is that two or more hitherto independent states agree to form a governmental union or a new state. Of this there are various kinds, varying in completeness and character of the union. International leagues or alliances, based on treaties, pacts or engagements fall outside this category. They are not unions in the true sense of the term, because they do not set up a common organization to compel action. Apart from these the German writers on public law have argued that there may be two main types of political unions, viz. virtual and legal. Virtual unions are real unions that lead to the merging of two or more states to form a single unitary state. The best example is the United Kingdom formed by the union of England, Scotland and Northern Ireland. There is one Parliament and one government for the entire state.

Legal unions assume different forms. They may be (1) protectorates as in the case of Uganda and East Africa within the British Empire; (2) unions of a superior and inferior state as was the case of Turkey and Egypt in the 19th century; (3) monarchical or personal unions, as when

there was one king for Norway and Sweden, and for England and Hanover; (4) confederation; and (5) federation. In a protectorate, a superior and highly organized state takes charge of another inferior and ill-organized state to help it achieve a certain measure of political development. The purpose of the union of a superior and inferior state is more or less the same as in the case of a protectorate. The only difference is that the inferior state, in spite of its union with the superior state, retains its independence to a much greater extent than in a protectorate. Monarchical or personal unions may or may not be real unions. When England and Scotland were united under one king, viz. James I, in 1603, the union was real and complete, and has remained so ever afterwards. But when the kings of Hanover succeeded to the English throne in 1720, the union was nominal, just personal and nothing more. The two kingdoms had separate governments and the union came to an end with the accession of Queen Victoria, because the Hanoverian laws did not permit female succession to the throne. Again the union between Norway and Sweden which was a personal or monarchical union continued from 1815 to 1905, but each country retained its own government, parliament, and national flag. When Norway wanted to separate, the union came to an end in 1905. The personal or monarchical union of Austria and Hungary however was of the nature of the union between England and Scotland. It was more solid than the union between Norway and Sweden, and as stable as that between England and Scotland. It lasted for centuries and came to an end only as a result of the first World War.

CONFEDERATION AND FEDERATION. The more significant unions are confederations and federations. "Confederation, both historically and logically, is prior to federation; but the latter is the more complete form of union." A confederation is not a single state. It is a collection of independent sovereign states united for specified purposes. They retain their independent sovereign status in the union and are free to withdraw or secede from the union. A confederation,

therefore, cannot be permanent and indissoluble in character. A federation, on the other hand is fundamentally different. It is one single state, and a new state formed by a number of independent sovereign states, which as a result of the union lose their independent status and sovereignty. The new state alone becomes sovereign. The federating states not only cease to be sovereign, they cannot withdraw or secede from the union. The union is thus permanent and indissoluble.

There have been, in the past, many instances of confederation and federation. In Greece there were the Delian Confederacy and the Achaean League. The Achaean League was more like a federation than a confederation. It had its own common laws, magistrates, coins etc. In the Middle Ages the Holy Roman Empire was like a confederation; and the Lombard League, the Hanseatic League were like federations. In recent times the British Commonwealth can be regarded as a confederation, while the United States and Switzerland are federations. India is a federal state but its origin and development are different from those of the federal states like the U.S.A. and Switzerland. In India, the imperial centralized government gradually decentralized its powers and set up autonomous provinces which, as a result of independence, became units in a federal union. They did not at any time possess independent status or sovereignty. They were federated into a union by the constituent assembly of India, which was representative of the people of India.

Usually the process of federation proceeds from the smaller to the greater. That is to say, small states combine to form a single large state. It is thus a process of centralization. But sometimes the process is reversed. A large state may subdivide itself on federal principles to secure more efficient government and permit autonomy to distinct groups in the state. This means that racial, religious or linguistic elements should be grouped together to form units of federation. There is also the process of devolution or decentralization in government. That happened in Mexico, Brazil, and, recently, in India and Pakistan.

CONDITIONS OF FEDERALISM. (a) *Geographical contiguity.* Certain conditions generally favour federalism. Geographical contiguity is one of them. The states should be so situated that they could be linked up to form one territory. That helps common defence, administration, and national unity. If the constituent states are separated by foreign territories, land or sea, contact becomes difficult. There may be carelessness or callousness on the part of the central and local governments. Smooth administration may be impeded, and defence becomes difficult. That is one of the weak points of Pakistan, one part of which is separated from the other by a vast stretch of land and sea.

(b) *Common language, culture or economic interest.* The second condition that generally favours federalism is community of language, culture and interests. If the groups that seek to form a single nation have common affinities, it becomes easy to achieve national unity and solidarity. Common language, or common economic interests, tend to draw people closer, and forge bonds of unity and fellow feeling. From that point of view, India is admirably suited for federation. The United States and the U.S.S.R. have achieved federation no doubt, but the process there has been more difficult. In both these federations the cultural diversity has been very marked. Yet they have succeeded owing to the common urge for political unity.

(c) *Urge for unity.* That indeed is the most important condition of federalism. The urge for political unity signifies the determination of the groups to come together, to form a bigger and stronger political entity than they are by themselves. This sentiment expresses a common national mind. And if this sentiment or urge is there other difficulties tend to disappear. Barriers of land and sea, of language, culture and religion are overcome and the process of federation attains strength and stability. That has happened in Switzerland, where three distinct national groups—the Germans, the French and the Italians—each having its own language, religious beliefs, culture, and historical traditions, have formed into a single nation. So is the case with Canada. Here the

English with their own language, Anglo-Saxon system of laws, political traditions and Protestantism have joined the French who differ from them in language, follow a system of laws different from the Anglo-Saxon system, and profess Catholicism. Again Pakistan has its two parts separated by more than a thousand miles of land and sea, and yet it is a federation. These examples point to the conclusion that the most essential condition of federalism is the urge for political unity, for achieving a bigger union. If this sentiment or urge exists other difficulties do not matter.

(d) *Equality of Status.* Another condition that fosters federalism is that the component parts or the federating units must enjoy equality of status. No matter the disparity between the constituent states in regard to the extent of their territory, number of population, economic condition, or historical importance, they must have parity in respect of their status within the union. In the United States, for example, each one of the 48 states has equal representation in the Senate. In the Commonwealth of Australia, the six constituent states send ten members each to the Senate which is the federal upper house and representative of the federating units. Similarly, the Swiss Republic provides equal representation to its cantons, which send two members each to the Council of States, the federal upper house. It is very different in the Indian Union. The Council of States in India contains representatives of the States, whose numbers vary from state to state. For example the State of Uttar Pradesh has 31, West Bengal 14, Orissa 9 and Assam 12 representatives in the Council of States. This disparity, whatever be its basis or justification, is likely to create dissatisfaction and retard national solidarity.

(e) *Political Capacity.* The last condition for federalism is the political capacity of the people. That always is the supreme test of all human endeavours, and particularly so in the political sphere. A people will always have the government that it deserves. Mere imitation may lead to frustration of efforts and grave consequences. And that is to be apprehended particularly because federalism by its very structure is the most difficult of all systems of government. It is based

upon the recognition of a double allegiance, one to the state and the other to the nation, and that requires a very high level of political sense, patriotism, and general intelligence. Even the U.S.A. had a terrible experience, when the country was bitterly divided over the question of slavery, and a bloody civil war was fought in order to maintain national unity and hold its states together.

ESSENTIAL ELEMENTS IN FEDERALISM. (a) *Sanctity of the Constitution.* After a discussion of the conditions necessary for federalism we may study the essential elements in federalism. The first is the constitution itself. The constitution must be a written document, and amendment of the constitution must not be easy. These two conditions are of the utmost importance for a federal constitution. The fact is that a federation is formed when a number of states decide to join together. The federal state emerges as a new state and as a sovereign state. The federating states are parties to an agreement, which is embodied in the constitution, by virtue of which the new state is born. To the constitution of this new state all persons and parties owe allegiance. From it they derive their rights, and in relation to it they enjoy their equality of status. The people become citizens of a new state and get a new nationality. Thus the constitution as a fundamental instrument has some sanctity about it. It enshrines the joint will of a community of states, guarantees them their rights and status on a footing of equality, and from it the people derive their citizenship. Since the autonomous status of a group of political communities and citizenship rghts of the people arise from the federal government, the constitution is written down and conditions are so provided that its amendment becomes difficult. It is deliberately not made flexible, and there is no exception made about it in any country in the world.

(b) *Division of Powers.* The next element in federalism is the division of powers. Since the federating units have to retain their autonomy in certain matters while the federal government exercises supreme authority in certain others the

spheres of each have to be defined. Otherwise there would be clash of authority. Hence powers are allocated between the central or federal government, and the state or provincial governments. Lists are drawn up containing the subjects which come within the competence of the one or the other. In the U.S.A. a list has been made of all the subjects assigned to the federal government. The rest, by implication, fall to the share of the states. So is the case with Australia. In Canada a list has been made of the subjects assigned to the provinces. The rest belong, by implication, to the federal government. In India, however, subjects have been assigned to the federal government and to the states, and they are contained in two separate lists called the Union List and the State List. But besides these two, there is a third list, of what are known as concurrent subjects. These are the subjects in respect of which both the federal and provincial governments have "concurrent" powers of legislation. Both possess the power of making laws regarding them, but in cases of conflict the constitution lays down that the federal laws shall prevail. This principle of "concurrent jurisdiction obtains of course in the United States, but to a much lesser extent; most of the powers granted to Congress are forbidden to commonwealths, but in some matters such as bankruptcy laws, they may act in the absence of federal legislation." In Australia, the powers of the federal govrenment have been laid down in great detail and include subjects like defence, foreign affairs. postal service, tariffs, taxation, interstate commerce etc. which are generally controlled by federal governments. But only a few of the powers are expressly declared as exclusive. In the majority of instances the state government may act where the federal government has not done so. Concurrent jurisdiction comes in there, and in cases of conflict the constitution lays down that "when the law of a state is inconsistent with a law of the commonwealth, the latter shall prevail." But the law of the commonwealth in question must not violate the constitutional limits, otherwise it will be declared void by the judiciary as in America. In India, though the jurisdictions of the federal and the provincial governments have been made exclu-

sive in certain subjects and concurrent in certain others, yet the constitution contains the provision that the federal legislature, that is Parliament, may legislate in respect of any subject included in the State List under conditions when the subject assumes national importance or during emergencies.

In this connection it may be noticed that there are generally two schemes of dividing the powers between the states and the federal government. The American scheme, adopted by the U.S.A. and Australia, provides for the enumeration of subjects allocated to the central or federal government. The rest or the residual subjects by implication fall within the ambit of state governments. In Canada, the scheme adopted is just the reverse. Here the subjects allocated to the states are enumerated, and whatever is left out, by implication, comes within the sphere of the central or federal government. In India, a third scheme has been adopted. Here not only are the subjects specifically allocated to the states and the federal government under the state list and the federal list, there is also a concurrent list of subjects which come, by their nature, within spheres of both the states and the federal government. This scheme is very necessary for a country like India, where federalism is introduced for the first time, and it is the only way of minimising conflicts of authority. In spite of this, if conflicts arise, the federal authority will prevail. As has been pointed out above, the federal legislature or Parliament has power to legislate on a subject in the State List if it assumes national importance or at times of emergency. Apart from these provisions, what are known as residual powers belong to the central government in India, as in Canada. In the U.S.A. and Australia they belong to the states.

In the allocation of powers the principle generally followed is that the subjects of national importance are assigned to the central government, and the subjects of local importance are assigned to states or provincial governments. On this basis, subjects like defence, foreign affairs, communications, currency and coinage, and weights and measures are assigned to the central government, whereas sanitation, public health, education, land revenue, forests etc. are assigned to the pro-

vincial governments. Subjects like the criminal law and procedure, civil procedure, marriage and divorce, trade unions, social security and social insurance, and economic and social planning are regarded as concurrent subjects, about which both the state and federal governments may be concerned. Thus three lists, viz. the Union List, the State List, and the Concurrent List have been prepared for the Indian Union. There are variations noticed in the allocation of subjects in different federations. In Australia the provincial governments control railways, while in the U.S.A. railways, airways, telegraph and wireless are left to the control of the states. In India these are not merely controlled by the federal government; they are actually run by the federal government.

(c) *Federal Judiciary.* The third essential element in federalism is the federal judiciary. It plays a very important role as the guardian of the constitution. As has been explained before, conflicts of authority are inherent in the very structure of a federation. Powers are divided between two sets of governments, and in spite of all possible care and human ingenuity exercised to eliminate the sources of conflict, conflicts may arise. Component states or the federal government may pass laws which are not within their competence. It is the duty of the federal judiciary to declare such laws invalid, if they run counter to the constitutional provisions. The federal judiciary in the United States possesses this power. In Canada, apart from the federal judiciary, the Governor-General also has the authority of declaring such laws *ultra vires.* That, however, does not affect the powers of the federal judiciary to pronounce a law unconstitutional. In Switzerland, that power is vested in the national legislature. In the Indian Union the Supreme Court has original jurisdiction, to the exclusion of any other court, in any dispute between the states of the Union, between a state and the Union government, involving a question of law or fact. It has powers of declaring a law void if that law conflicts with the provisions of the constitution. The Supreme Court has thus been made the final interpreter of the constitution. The High Courts and the Supreme Court have power also to issue various kinds of writs on

individuals, associations and even on governments to enforce fundamental rights.

SOVEREIGNTY IN A FEDERAL STATE. Since the structure of federation involves division of powers and demarcation of autonomy, the question naturally arises as to where sovereignty actually resides. If, that is to say, there are two types of government, each independent in its own sphere, which is supreme? There has, in the past, been much controversy over this point. If the creation of a federal state annihilates the sovereignty of the component states, can it not be said that it resides in the federal government? But the federal government has specified powers. Its competence is limited to the subjects assigned to it. Over the rest the component states have complete authority. Hence it has been explained that sovereignty does not lie in the federal or state government singly or conjointly. It lies "in the body wherever and whatever it may be, which has the power to amend the constitution". It resides in the entire nation, and there is no division of sovereignty, since the nation, after the federal union, is one unified, indivisible whole. In all tangible reference, the body which is competent to amend the constitution is sovereign. It therefore cannot be maintained, as has been said with reference to the U.S.A., that "the United States are sovereign as to all the powers of government actually surrendered. Each state in the Union is sovereign as to all the powers reserved." The sovereignty in the United States resides jointly in that body which elects two-thirds of the Congress and the majority of the members in the state legislatures of three-fourths of the states. In the same way, in other federal states, the body that can amend the constitution should be regarded as sovereign, and the question of divisibility of sovereignty is ruled out.

ADVANTAGES AND DISADVANTAGES OF FEDERALISM. "The chief advantage of federalism is that union gives strength: it also gives dignity. To be a member of a great nation like the United States is more dignified than to continue a citizen of an independent Virginia or Texas." When small

states combine, they save a great deal on so many different items of administration. They save on inter-state communications, postal service, defence, diplomatic service, foreign relations, and so on. Tariff walls disappear and, particularly in matters of defence, foreign relations, trade and commerce and national security, there is everything to gain for the component states. Since there is division of powers between the federal and provincial governments, it makes for efficient government. The affairs that are of local or provincial importance are disposed of by the local authorities. This helps efficiency because the local authorities are conversant with local affairs more than others. It also ensures ready and prompt action on the part of the government in respect of the matters that come within its sphere. Unnecessary delays, which are the besetting vice of modern administration, are avoided. Lastly, the principle of compromise on which the union is based makes for wider and richer national life. Every citizen gets an unlimited scope for his activities. His local patriotism does not suffer diminution when he gives his loyalty to the nation.

Equality of citizens and equality of states are the twin pivots of all federations, and therein lies the strength, as also the weakness, of all federations. /Critics of federalism have pointed out that all its disadvantages flow from the fact that it accepts a double system of government and offers double citizenship. In times of national emergency, a double system of government is likely to move slowly into action, and that is dangerous. A double system of government with double citizenship may on occasions encourage recalcitrance. When the vital interests of the component states and of their citizens are adversely affected they may continue to resist the central authority and demand secession. That is easier in a federal state than in a unitary state. The civil war in the United States, when the southern states wanted to secede, is a well-known example of this tendency. Even when there is no desire for secession, there may be combinations formed for promoting group interests. Such combinations may serve to create internal rifts and deadlocks, which are bound to weaken the basis of federation. But it all depends upon the

human material from which the federation derives its life and character. There is nothing like a model system of federation or, for that matter, any model system of government. It cannot be said that this or that element in federation is good or bad, and that a given political system is bound to succeed or fail.

The best type of federal government is that which is best adapted to the genius of the people. The chief point is that a form of government will always suit a people if it partakes of the life and character of that people. It should, in other words, be evolved by the people. The Americans have been able to build up a federal system through years of trouble and turmoil, and today it has become a model for the world. How they have done it has been thus briefly described: "In the United States, more than anywhere else in the world, full advantage has been taken of the possibilities of the federal principle. Its history is largely a history of federations. In the earliest times of colonial history we have the formation of Connecticut by the federal union of its towns, and the establishment of the New England Federation inviting the northerly colonies for mutual protection. The quarrel with Great Britain in the eighteenth century brought the thirteen colonies into a union which, after passing through the preliminary stages of the Continental Congress and abortive confederacy of 1781, was finally consolidated into the present federal republic. The principle of political growth and constitution adopted in 1789 has governed the whole evolution of the United States during the nineteenth century."[1] During the 19th century the federation encountered one terrible disaster. That was the Civil War of 1860 and after that it emerged stronger and greater than before. The Civil War imposed a new character on federalism, and that was that a federation once formed is indissoluble. No secession is possible. That is how political systems develop. Mere adaptation or imitation does not ensure that a system is suitable to a people.

1 Leacock—*Elements of Political Science*, pp. 230-1.

Chapter XVIII

THE LOCAL GOVERNMENT

DISTINCTION BETWEEN CENTRAL AND LOCAL GOVERNMENTS. In studying the structure of the state we have to notice the distinction between the central government and the local government. In a federal state, such distinction is usual, the central government signifying national government and the government of the component states signifying local government. But that is not what we are here concerned with. Central government and local government in this context refer to two administrative bodies, one subordinate to the other, and the one deriving its authority from the other. They are not co-ordinate bodies, completely independent in their own sphere as in a federal state. In this context, the local government figures as an authority invested with certain powers and functions by the central government for purposes of administrative convenience. The powers are delegated and subject to control by the central government. The central government therefore manages the affairs, of the entire state, and its authority extends over the entire territory of the state; whereas the local government manages the affairs of a distinct area that forms an administrative unit in the state, and exercises the authority delegated to it for specific purposes by the central government. The bodies that constitute local government thus function in subordination to the central government or government of the state. They carry on administration, render public services and maintain public utilities in small well-defined areas of the state in a manner determined by the central government for the convenience of the communities living there.

CONSTITUTIONAL DISTINCTION. Thus, the distinc-

tion between the central government and the local government is both constitutional and functional. Regarding the constitutional distinction, it may be stated generally that the central government is created by the constitution, and cannot be modified except by its amendment. But the local government is created by the central government and may be changed at its pleasure. The local government therefore owes its existence to, and derives its authority from, the central government. The institution of local government everywhere demands the division of the entire territory of the state not only into one set of subordinate areas but into several such areas. Hence the local government comprises the government of the district, the sub-divisions of the district like tahsils, and the civic bodies like the municipalities, district boards, notified areas etc. as we know them in India. In the United States the local government consists of counties and townships; in England of counties, districts, and parishes; and in France of departments, arrondissements, cantons and communes. But it is not everywhere that the local government bodies owe their existence to the central government. In certain countries they have been in existence long before the entire country was unified under one central government. Little communities like the English parish, the French commune and the Prussian gemeinde have existed from times immemorial, conducting their joint concerns by some form of common management. Where such bodies exist, they have to be integrated into the administrative system of the country, and allowed to function. Some of them may have grown vastly in population and owing to historical circumstances. Constitutionally, they are a class apart from the central government, and are either created or recognized as such by the central government.

FUNCTIONAL DISTINCTION. The distinction in their functions has been very well explained by Prof. Leacock. "The various functions performed by the agencies of the state for the benefit of the citizens will roughly fall into two classes. Some of them will be in the interests of the community gene-

rally, and the budget thereby affected will not be assignable to any single part of the country. For example, the protection afforded by the army and navy, whereby foreign conquest is prevented, is a benefit shared by all the inhabitants alike. The same will be true of the large class of public works, the advantage and purpose of which may be said to be national. . . . But in addition to these, there are other state activities . . . of quite a different character. Here the benefit to be conferred only affects a small portion of the community, and is obviously assignable to a particular area. The lighting of a town, the erection of a bridge over a country road, the establishment of a street-car system, are matters of this sort. Here it seems reasonable that the advantage, cost and the control of the enterprise should be looked upon as solely the concern of those who are affected by it. Such then is the distinction between the duties of central and local governments. The public services of the latter will be found on examination to refer mainly to the maintenance of schools, hospitals, asylums, bridges, roads, parks, etc., and the management of local public utilities such as lighting plants, transportation systems. . . . The services thus performed may be better understood by contrasting them with such regulative legislative activities as the making of the criminal law which belongs to the central government."[1]

But there are certain services which have become the duty both of the central and local governments to perform. Education and public health, for example, are as much the concern of the local as of the central government. The reason is obvious. If education were left entirely to the management and resources of the local bodies there would be great diversity and disparity in the quality and system of education. A big city like Bombay or Calcutta will have a far more efficient and adequate system of education than a town like Thana near Bombay or Burdwan near Calcutta. But it is a matter of vital interest for the state that the people should be educated, and that their health should be protected and promoted. Therefore, the central government must assume

1 Leacock—*Elements of Political Science*, pp. 276-7.

control in the management of these services, though it may leave the municipal and other local bodies to do what they can to run them by raising money or spending government grants. In spite, therefore, of the distinction regarding the functions of the central and local government, there are fields where they shade and blend into one another, and a water-tight distinction is impossible.

AREAS OF LOCAL GOVERNMENT. The study of local government can be pursued under four heads, viz., (*a*) the areas of local bodies, (*b*) their organization, that is, the composition of the local bodies and their functions, (*c*) their utility, and (*d*) their relation with the central government. It has been explained that the central government creates political divisions and bodies exercising delegated authority for administrative convenience. Sometimes they are historic survivals of political units and may be independent states or local communities which have existed before the central government was established, but into which they have subsequently been absorbed. The principles on which political divisions or areas of local government are formed are not easy to determine. They have varied according to the countries and their history. Generally speaking, area and population have been determined on considerations of political expediency, natural influences, and past history. The primary divisions of a state frequently represent earlier states whose independent existence has been merged into a larger whole. In India this has happened in the past when the British formed the provinces of their Indian empire, by conquering and merging some of the then-existing independent states like Mysore, Oudh, Nagpur, Punjab, etc. Recently, the Indian Union has been formed by merging the Indian states, some of which have been constituted into political divisions like Rajasthan, Mysore, Kerala, etc. In the United States, the commonwealths, in Switzerland the cantons, and in France the departments like the states in the Indian Union enjoy a considerable measure of autonomy, and have legislative bodies of their own. These form the primary political divisions, and

are not local government units except in a broad relative sense. They are local governments only in relation to their respective national or central governments.

The next divisions are created for administrative convenience, on the basis of historical or geographical considerations. These are the districts of the fourteen states of the Indian union, the counties of the United Kingdom and the U.S.A., and the arrondissements in France. Below them come smaller units, usually having corporate existence with subordinate administration and jurisdiction. The examples are the cantons of France, the townships in most parts of the U.S.A., and county-districts of the United Kingdom. These are practically of the same pattern, and below them are still smaller units called communes in France and Switzerland, gemiendes in Germany, parishes in England, and townships in some parts of the U.S.A. In India, there are sub-divisions and tahsils in a district, but they are differently constituted. They are mere administrative divisions. The district boards, municipalities, notified areas, and village panchayats are regarded as bodies of the local self-government. Local self-government in India has the same connotation as local government elsewhere. Only in India the sphere of local self-government so far is limited to corporate bodies like the municipalities in urban areas and the recently instituted bodies like the village panchayats, the judicial panchayats etc., in rural areas.

ORGANIZATION OF LOCAL GOVERNMENT. (a) *United Kingdom.* For purposes of local government, England and Wales are divided into 62 administrative counties, including London, and 83 county boroughs. A county is administered by a county council elected by the people. Its jurisdiction extends over the administration of higher and elementary education, maintenance of the main roads and bridges, work in relation to agriculture, the prevention of pollution of rivers and supervision of milk and other food supplies. The control of the county police is vested in a Standing Joint Council consisting of equal number of magistrates and of the members of the County Council. The administrative counties

are sub-divided into county districts, which may be non-county boroughs, urban districts, or rural districts. An urban district comprises a town or small area rather densely populated, and a rural district comprises several county parishes. A county district council administers the Public Health and Highway Acts, and exercises powers under the Housing Acts. Urban authorities manage water supply, parks and museums, libraries, lighting, repairs of roads and similar other matters of public utility. In all incorporated towns there are municipal corporations, which manage all local affairs. There are two kinds of municipal boroughs, viz., county boroughs and non-county boroughs. Most of the county boroughs and a number of the non-county boroughs have separate courts of quarter-sessions. The county boroughs are outside the jurisdiction of county councils. A municipal corporation consists of the mayor, aldermen and burgesses, and acts through a popularly elected council. As in the county councils, the councillors serve for 3 years, one-third retiring annually; the aldermen are elected by the council and serve for 6 years, half of them retiring every third year; and the mayor, who serves for one year, is also elected by the council. By the Act of 1946, the county councils and county borough councils have become local health authorities and administer the local health services.

(b) *United States.* In the U.S.A., the chief unit of local government is the county, of which there are 3,049, with definite functions. The counties maintain public order through their sheriffs and deputies; in many states, the counties maintain smaller local highways and, in a few states, they manage the schools. All of them grant licenses, and apportion and collect taxes. In New England, i.e. the thirteen original colonies, the unit of local government is the rural township, governed directly by the voters who assemble annually, or oftener if necessary, and legislate in respect of local affairs, levy taxes, make appropriations, and appoint and instruct the local officials. Townships are grouped to form counties, and where cities exist, township government is superseded by city government. In the southern parts of the U.S.A., the county

system prevails. The county authorities carry on most of the administrative functions of the localities. The county organization, on the administrative side, consists of a board of commissioners, which has under it a treasurer, an auditor and superintendents of education, roads and the poor. On the judicial side, it consists of a sheriff, clerk, coroner, attorney and other minor officials. Besides the townships and counties, there are school districts as separate areas with separate officials. Urban areas such as boroughs and cities have separate organizations. Counties and townships are areas of rural organization only. "The electors or freeholders of less populous urban districts are in most of the states empowered to obtain a simple sort of urban organization and considerable urban powers, by certain uniform routine processes, from the courts of law; villages (as they are called in New York), boroughs (as they are styled in Pennsylvania), towns (as they are sometimes designated in the South), cities of the lesser grades (in states where towns are classified according to population), may usually get from the courts, as of course, upon proof of the necessary population and of the consent of the freeholders or electors, the privilege of erecting themselves into municipal corporations under general acts passed for the purpose. . . ."[1] The town or borough is a public corporation that receives by delegation certain powers of government.

Generally, the smaller urban areas have a mayor, president or chief burgess; a small town-council with powers of making bye-laws, levying taxation for local improvements and administration and of local direction; a treasurer, a clerk, a collector, a street commissioner, sometimes overseers of the poor; and, generally, such other minor officers as the council may appoint. The big cities have separate judicial organizations with their own courts, sheriffs, coroners, and states-attorneys, and are sometimes made independent of the counties in which they lie. They have, like the state legislature, two houses, one, a board of aldermen, and the other, a board of common councilmen, which have powers of making laws

1 Wilson—*The State*, p. 349.

and raising taxes for the city administration. The mayor and the chief officers of every city are elected.

(c) *France.* "The general rule of French administration is centralization through appointed officers in every grade of local government, and the ultimate dependence of all bodies and officers upon the ministers in Paris. In one particular this rule is departed from in the Commune. The Chief Executive Officer of the Commune, the Mayor, is elected, not appointed. He is chosen by the Municipal Council from among its own members and is given one or more assistants elected in the same way."[1] There are 38,000 communes (1954) in the 90 metropolitan departments. Of these, 34,068 had, in 1954, less than 1,500 inhabitants each, and 23,807 had less than 500 each, while 208 communes had more than 20,000 inhabitants each. The unit of local government is the commune. The local affairs of the commune are managed by a municipal council composed of from 10 to 36 members elected by universal suffrage. The next unit, above the commune, is the canton. There were 3,031 cantons in 1954, each composed of 12 communes on an average. But some of the largest communes are, on the contrary, divided into several cantons. The district or arrondissement comes above the cantons, and there were 311 arrondissements in 1954. Each one has an elected council, with as many members as there are cantons. The chief function is to allot among the communes their respective shares in the direct taxes assigned to arrondissement by the Council General.

(d) *India.* In India, however, local government connotes government of the district and of its divisions and sub-divisions and not corporate bodies like the townships, boroughs or communes in foreign lands. Such bodies are categorically called local self-governing bodies in India. Their development has been very slow in the past. Local government, which is regarded as the best seat of education in the art of self-government and offers the best training in politics, has been rather neglected in the past, and evokes at present little

[1] Wilson—*The State*, p. 171.

enthusiasm among the people. There were, in 1947-48, 360 municipalities with a total of 7,085 members of whom 6,932 were non-official. They managed water supply, lighting and repair of roads, sanitation, drainage, medical relief, primary education, and vaccination. For rural areas, there are district boards, sub-district boards, and village panchayats. These boards are in charge of roads, district schools, markets, public health institutions etc. Panchayats exist for groups of villages. Their functions are of a purely local character. Recently, Nyaya Panchayats have been instituted and these exercise certain judicial powers within their jurisdiction.

UTILITY OF LOCAL GOVERNMENT. Local government in all countries, or what is known as local self-government in India, implies decentralization and devolution of the functions of government. Within certain limits, and in certain spheres, the local government bodies function independently. Nevertheless, the central government maintains expert staffs such as public health officers, public works engineers, and educational inspectors to help the local bodies, to advise them and to supervise their activities. The institution of local government, therefore, is very useful and beneficial in a variety of ways. It helps economy and efficiency, since the local affairs are best understood and can be best managed by local people. It is economical, because if the central government were directly to undertake the lighting, sanitation, water-supply or such other things in small towns and the rural areas, the cost would be enormous. Decentralization or devolution, which means creation of little spheres of activity for the local people, also gives them a good training in self-government. People are afforded opportunities to develop initiative, co-operation, self-help, and a sense of public responsibility. For, every local body has a council for deliberation and discussion of the common needs of the people, and exercises powers of taxation for meeting schemes of common utility and benefit. It is also most competent to advise the central government in all matters affecting the welfare of the people in matters of legislation, taxation, etc. That way it

forms the basis of democratic government in a real sense. Further, this process of decentralization lightens the task and responsibility of the central government. "Experience shows that the greater the responsibility of a local body, the more likely it is that a better class of men will come forward to serve the community. Where a local body merely interprets and executes the will of the central government, it is difficult to secure public spirited men of the proper type."[1] That is the supreme benefit of the institution of local government.

RELATIONS WITH THE CENTRAL GOVERNMENT. The relations between the local government and the central government are clearly brought out by the methods generally adopted by the central government in controlling the local bodies. Generally speaking, there are three recognized methods. In the first place, there is what can be described as legislative centralization with administrative decentralization. The central government passes laws and the local bodies are required to administer them. At the same time, the local bodies are authorized to make bye-laws, which are really administrative rules. This method is adopted for the sake of uniformity in the composition and functioning of local bodies. This system is in vogue in England, the U.S.A. and India. The second method is legislative decentralization with administrative centralization, which obtains in France. Here the central government administers the laws of the local bodies through its own officials. The third method consists in part-centralization and part-decentralization in both the legislative and administrative spheres. This is a compromise between the first two methods and once prevailed in old Prussia. But now there seems to be a tendency to adopt this method both in England and the U.S.A. In India also, this tendency appears to be growing. In many of the component states, new types of local bodies are coming into existence, and they are being invested with powers to make laws within the limits fixed by the central government and to execute them, under the general supervision of central government officials.

[1] Gilchrist—*Political Science*, p. 394.

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